

ANNUAL REVIEW 2006



Supreme Court
of New South Wales

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FOREWORD BY CHIEF JUSTICE OF NSW

This Review sets out an overview of the structure, organisation and procedures adopted by the Court for the purposes of discharging its constitutional responsibilities pursuant to the common law and statutes of both the New South Wales and Commonwealth Parliaments. The Review also provides information of the Court's stewardship of the resources made available to it.

The full detail of the Court's contribution to the people of New South Wales exists in the large volume of documentation produced by the Court – encompassing tens of thousands of pages of judgments and hundreds of thousands of pages of transcript. The bald figures of filings, disposals and pending caseload, upon which this Review reports in some detail, does not reflect the richness which is contained in the considerable volume of documentation which the Court's judicial officers and registrars generate in the course of the year.

An indication of the contribution made by the Court, and of the effectiveness and efficiency of its procedures, can be gleaned from this Review, which contains information of a quantitative kind about how the Court has dealt with its caseload and the speed with which litigants have had their disputes resolved.

However, the primary measure of the Court's performance must be qualitative: fidelity to the law and the fairness of its processes and outcomes. This Review sets out in short summary a few of the cases decided in the year 2006. This is but a small sample of the 2000 or so separate substantive judgments delivered by the 51 judicial officers of the Court.

The judges of the Court are conscious of the fact that this public confidence in the administration of justice cannot be taken for granted and must be continually earned, so that that confidence is continually replenished. A Review of this character cannot provide anything other than a general indication of the extent to which the Court has performed its duties in such a manner as to justify the high level of trust that the public of New South Wales displays in the operations of the Court.

One of the ways in which this trust has been earned during the course of this year is by the participation of members of the public in the entire process of the administration of justice, whether as litigants, as witnesses, or as jurors. Each year thousands of citizens of New South Wales acquire direct experience of the operations of the Court in one of these ways.

I am confident that, during the course of 2006, the rule of law was administered by the judicial officers of the Court with a high level of independence, impartiality, integrity, efficacy and efficiency. I have no doubt that that will continue to be the case.



J J Spigelman AC

2006: AN OVERVIEW

- Notable judgments
- Court operations
- Education and public information
- Consultation with Court users

Notable judgments

During 2006, the Court of Appeal handed down 381 judgments, and the Court of Criminal Appeal delivered 411. In respect of its criminal and civil trial work, the Court delivered 1,451 judgments at first instance. Some judgments were particularly notable either for their contribution in developing the law, their factual complexity or the level of public interest they generated. Summaries of a selection of these judgments appear in Appendix (i) to this Review.

Court operations

The avoidance of excessive delay remains a priority for the Court. In most areas of its work, the Court has been able to surpass results achieved in 2005, or at least maintain its position. The Court of Criminal Appeal managed to further reduce the number of pending cases from the record-breaking achievement in 2005. There were also significant improvements to the age profile of criminal cases during 2006. At the end of 2006, 96 per cent of pending criminal cases were less than 24 months old, compared with 86 per cent at the same time last year. The *Court operations* chapter outlines the specific time standards set by the Court along with detailed analysis of the results achieved in each jurisdiction. This chapter should be read in conjunction with the comprehensive statistical data tabled in Appendix (ii) to this Review.

Education and public information

Many judicial officers updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Some of the educational activities were tailored specifically to the Court's needs, whilst others targeted the international legal community. The Public Information Officer continued to provide the media, and consequently the general public, with reliable information about contentious issues or proceedings before the Court. The Court's Registrars spoke to 105 student and community groups during the year, providing them with a unique insight into the work of the Court and its place in the State's legal system. These are some of the activities featured in Chapter 5 of the Review.

Consultation with Court users

In 2006 the Court continued to work closely with its users to improve systems and procedures through a network of Committees and User Groups. Representatives on the Committees and User Groups include judicial officers (from the Court and other jurisdictions), senior registry staff and representatives from justice agencies and the legal profession. A list of the Court's Committees and User Groups, and their members during 2006, forms Appendix (iii) to this Review.

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COURT PROFILE

- The Court's jurisdiction and Divisions
- Who makes the decisions?
- Supporting the Court: the Registry

THE COURT'S JURISDICTION AND DIVISIONS

The Supreme Court of New South Wales: our place in the court system

The court system in New South Wales is structured on a hierarchical basis. The Supreme Court is the superior court of record in New South Wales and, as such, has an inherent jurisdiction in addition to its specific statutory jurisdiction.

The Supreme Court has appellate and trial jurisdictions. The appellate courts are the:

- Court of Appeal, and
- Court of Criminal Appeal.

The work of the first instance criminal and civil jurisdictions, is divided between two Divisions:

- Common Law Division, and
- Equity Division.

This structure facilitates the convenient despatch of business in accordance with the provisions under section 38 of the *Supreme Court Act 1970*.

Section 23 of the *Supreme Court Act 1970* provides the Court with all jurisdiction necessary for the administration of justice in New South Wales. The Supreme Court has supervisory jurisdiction over other courts and tribunals in the State. The Court generally exercises its supervisory jurisdiction through its appellate courts.

The Industrial Court of New South Wales and the Land and Environment Court of New South Wales are specialist courts of statutory jurisdiction. The Judges of these courts have the status of Supreme Court Judges.

The District Court of New South Wales is an intermediate court whose jurisdiction is determined by statute. The Local Court sits at the bottom of the hierarchy of New South Wales courts, and has broad criminal and civil jurisdictions. There are also tribunals and commissions in New South Wales with statutory powers similar to the District and Local Courts.

Figures 2.1 and 2.2 overleaf illustrate the court hierarchy in New South Wales and the gateways to appeal in the criminal and civil jurisdictions.

Court of Appeal

The Court of Appeal is responsible for hearing appeals in civil matters against the decisions of the judicial officers of the Supreme Court, other courts, commissions and tribunals within the State, as prescribed in the *Supreme Court Act 1970*.

Court of Criminal Appeal

The Court of Criminal Appeal hears appeals from criminal proceedings in the Supreme Court, the Industrial Court, the Land and Environment Court, the District Court and the Drug Court. Appeals may challenge convictions and sentences imposed upon indictment or in the trial court's summary jurisdiction, or interlocutory orders made by the trial court. Appeals from committal proceedings in the Local Court may also be heard in certain circumstances.

Sittings of the Court of Criminal Appeal are organised on a roster basis whilst taking into account the other regular judicial duties and commitments of the Judges who form the Court's bench. The Judges who sit in the Court of Criminal Appeal are the Chief Justice, the President, the Judges of the Court of Appeal, the Chief Judge at Common Law and Judges of the Common Law Division. Throughout 2006 an average of three Common Law Division judges were assigned to the Court of Criminal Appeal.

Common Law Division

The Division hears both criminal and civil matters. The criminal matters heard involve homicide offences and offences where the prosecution seeks life imprisonment. Other matters involving serious criminality or the public interest may be brought before the Court with the Chief Justice's approval. The Judges of the Division also hear bail applications, matters concerning proceeds of crime, and post-conviction inquiries.

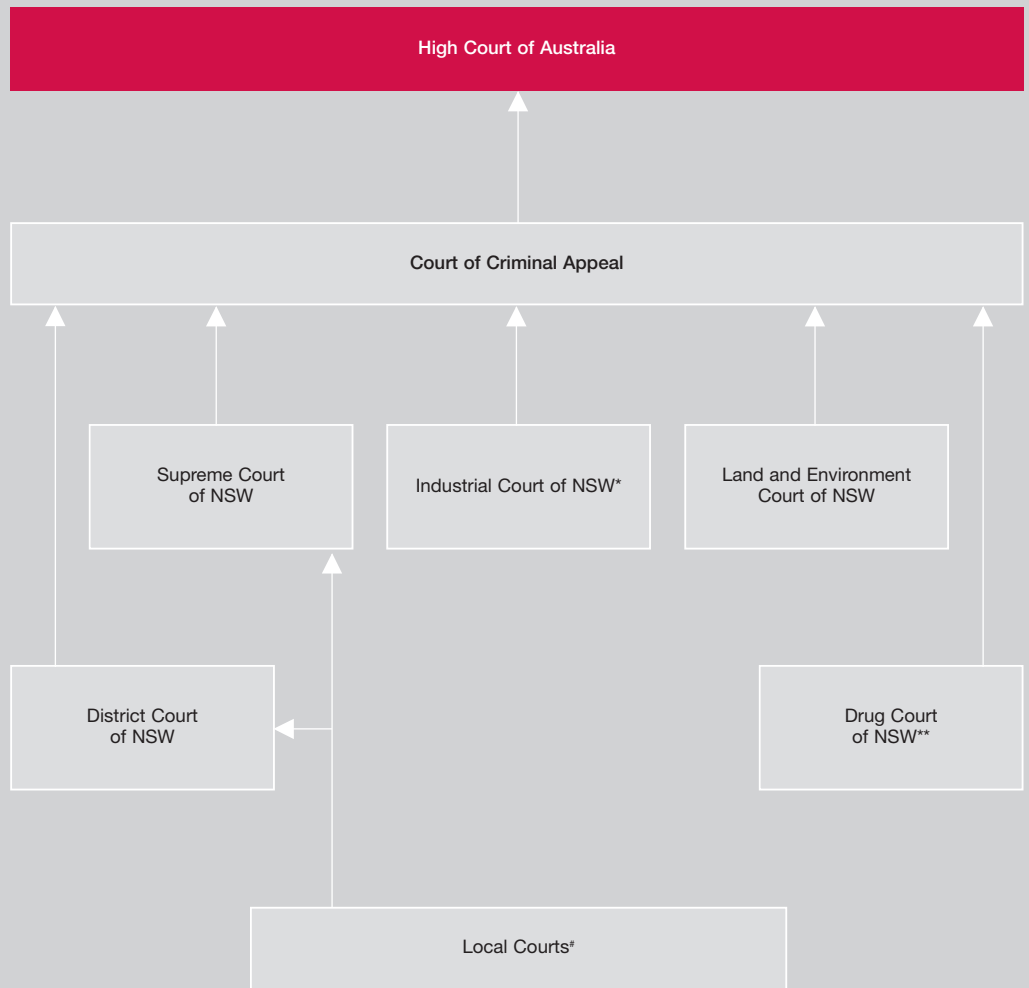
The Division deals with all serious personal injury and contractual actions, in which the Court has unlimited jurisdiction. The civil business of the Division also comprises:

- claims for damages;
- claims of professional negligence;
- claims relating to the possession of land;
- claims of defamation;
- administrative law cases seeking the review of decisions by government and administrative tribunals; and
- appeals from Local courts.

Equity Division

The Equity Division exercises the traditional Equity jurisdiction dealing with claims for remedies other than damages and recovery of debts, including contractual claims, rights of property, and disputes relating to partnerships, trusts, and deceased estates. The Division hears applications brought under numerous statutes, including the *Corporations Act 2001 (Commonwealth)*, the *Family Provision Act 1982*, and the *Property (Relationships) Act 1984*. The Division also handles a diverse range of applications in the areas of Admiralty law, Commercial law, Technology and Construction, Probate and the Court's Adoption and Protective jurisdictions.

FIGURE 2.1 NSW COURT SYSTEM – CRIMINAL JURISDICTION



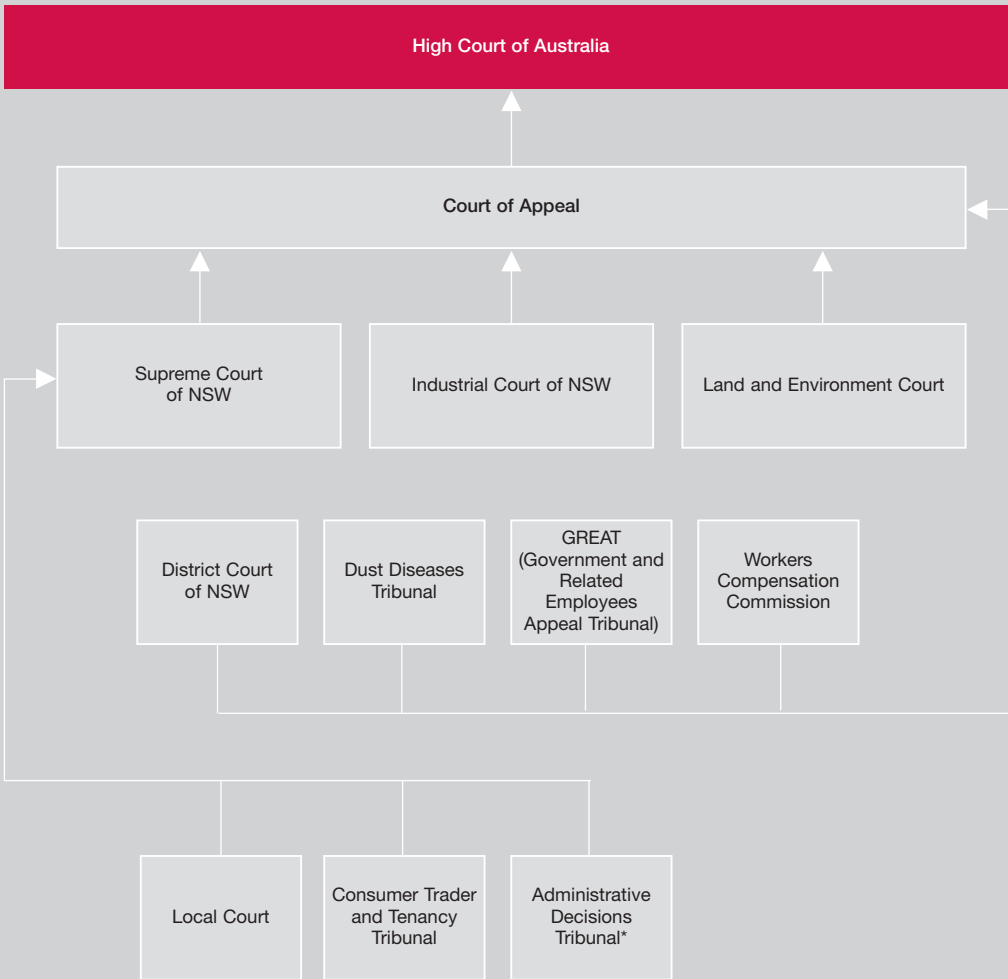
Note: the above diagram is a simplified representation of the appeal process in NSW. Actual appeal rights are determined by the relevant legislation.

*The Court of Criminal Appeal may hear some appeals in matters relating to section 32A of the Occupational Health and Safety Act 2000

** Some appeals are made to the District Court of NSW.

Some appeals from committal proceedings may be made to the CCA.

FIGURE 2.2 NSW COURT SYSTEM – CIVIL JURISDICTION



Note: the above diagram is a simplified representation of the appeal and judicial review process in NSW. Actual appeal rights are determined by the relevant legislation.

*Some claims may instead be made directly to the Court of Appeal pursuant to Section 48 of the Supreme Court Act 1970.

WHO MAKES THE DECISIONS?

The Judicial Officers of the Supreme Court of New South Wales are its Judges and Associate Judges. The Registrars of the Court have limited decision-making powers.

The Judges

The Governor of New South Wales formally appoints the Judges of the Court following a decision by Cabinet. Judicial appointments are made on the basis of a legal practitioner's integrity, high level of legal skills and the depth of his or her practical experience.

The Governor appoints judges pursuant to section 25 of the *Supreme Court Act 1970*. Section 25 specifies that the Court will include: a Chief Justice, a President of the Court of Appeal and, such other Judges of Appeal, Judges and Associate Judges, as the Governor may appoint from time to time. The Governor is also empowered to appoint qualified persons as Acting Judges of Appeal or Acting Judges when the need arises.

The Chief Justice is, by virtue of his office, a Judge of Appeal, and the senior member of the Court of Appeal. The other members of the Court of Appeal are the President and the other Judges of Appeal. The Judges of the Court are assigned to specific Divisions, and ordinarily confine their activities to the business of those Divisions. In certain circumstances, the Chief Justice may certify that a particular Judge should act as an additional Judge of Appeal in a certain proceedings before the Court of Appeal.

The *Supreme Court Act 1970* also provides that the Chief Justice may appoint Judges to administer a specific list within the Common Law or Equity Divisions. Details of the Judges assigned to these lists in 2006 can be found in the chapter entitled *Caseflow Management*.

As at 31 December 2006 the Judges, in order of seniority, were as follows:

Chief Justice

The Honourable James Jacob Spigelman AC

President

The Honourable Justice Keith Mason AC

Judges of Appeal

The Honourable Justice

Kenneth Robert Handley AO

The Honourable Justice

Margaret Joan Beazley AO

The Honourable Justice Roger David Giles

The Honourable Justice David

Hargraves Hodgson

The Honourable Justice

Geza Francis Kim Santow OAM

The Honourable Justice David Andrew Ipp

The Honourable Justice Murray Herbert

Tobias AM RFD

The Honourable Justice

Ruth Stephanie McColl AO

The Honourable Justice John Purdy Bryson

The Honourable Justice John Basten

Chief Judge in Equity

The Honourable Mr Justice Peter

Wolstenholme Young AO

Chief Judge at Common Law

The Honourable Justice Peter David McClellan

Judges

The Honourable Mr Justice Michael Brian

Grove RFD

The Honourable Mr Justice

Timothy James Studdert

The Honourable Mr Justice Brian Thomas Sully

The Honourable Mr Justice

Bruce Meredith James

The Honourable Mr Justice

William Victor Windeyer AM RFD ED

The Honourable Mr Justice

Robert Shallcross Hulme

The Honourable Justice

Carolyn Chalmers Simpson

The Honourable Justice Peter John Hidden AM

The Honourable Justice Graham Russell Barr
 The Honourable Mr Justice John Perry Hamilton
 The Honourable Justice Clifford Roy Einstein
 The Honourable Justice
 Michael Frederick Adams
 The Honourable Justice David Kirby
 The Honourable Justice Robert Peter Austin
 The Honourable Justice Patricia Anne Bergin
 The Honourable Justice Virginia Margaret Bell
 The Honourable Justice
 Anthony Gerard Joseph Whealy
 The Honourable Justice Roderick Neil Howie
 The Honourable Justice Reginald Ian Barrett
 The Honourable Justice George Alfred Palmer
 The Honourable Justice
 Joseph Charles Campbell
 The Honourable Justice Terence Lionel Buddin
 The Honourable Justice Ian Vitaly Gzell
 The Honourable Justice William Henric Nicholas
 The Honourable Justice
 Robert Calder McDougall
 The Honourable Justice John David Hislop
 The Honourable Justice Richard Weeks White
 The Honourable Justice
 Clifton Ralph Russell Hoebein AM RFD
 The Honourable Justice Peter Anthony Johnson
 The Honourable Justice Peter Michael Hall
 The Honourable Justice Megan Fay Latham
 The Honourable Justice Stephen Rothman
 The Honourable Justice
 Paul Le Gay Brereton RFD
 The Honourable Justice Derek Michael Price

Acting Judges

The following persons held commissions during 2006. Unless otherwise indicated, the judicial officer's commission was effective for the entire calendar year.

Acting Judges are asked to preside over specific hearings as the need arises. The total number of days each person acted as a Judge of the Court during 2006 is detailed in brackets below.

Acting Judges and Acting Judges of Appeal (in alphabetical order)

- The Honourable John Edward Horace Brownie QC (commission effective between 1 Jan and 2 May; acted as a Judge of the Court for 5 days).
- The Honourable David Anthony Hunt AO QC (commissions effective between 1 Jan and 13 Jan, and 31 Jan and 31 Dec; acted as a Judge of the Court for 100 days).
- The Honourable Jane Hamilton Mathews AO (acted as a Judge of the Court for 101 days).
- The Honourable Jeffrey Allan Miles AO (commission effective between 1 Jan and 27 Apr; was not required to act as a Judge of the Court during 2006).
- The Honourable Mahla Pearlman AO (was not required to act as a Judge of the Court during 2006).
- The Honourable Paul Leon Stein AM (commission effective between 1 Jan and 1 Feb; was not required to act as a Judge of the Court during 2006).

Acting Judges (in alphabetical order)

- The Honourable Justice Peter Meldrum Biscoe (commission effective between 6 Nov 15 Dec; acted as a Judge of the Court for 30 days).
- The Honourable Harvey Leslie Cooper AM (acted as a Judge of the Court for 131 days).
- The Honourable John Robert Dunford (commission effective between 13 Jan and 31 Dec; acted as a Judge of the Court for 10 days).
- The Honourable Justice David Henry Lloyd (commission effective between 2 Oct and 27 Oct; acted as a Judge of the Court for 14 days).

- The Honourable Peter James Newman RFD (acted as a Judge of the Court for 34 days).
- The Honourable David Louthean Patten (acted as a Judge of the Court for 211 days).
- The Honourable Nigel Geoffrey Rein SC (commission effective between 13 Jan and 28 Apr; acted as a Judge of the Court for 61 days).
- The Honourable Rex Foster Smart QC (acted as a Judge of the Court for 81 days).

Appointments and Retirements

Derek Michael Price, Chief Magistrate of NSW, was appointed a Judge of the Supreme Court on 28 August 2006.

No judicial officers retired during the 2006 calendar year.

The Associate Judges

The Governor appoints Associate Judges to the Court under section 111 of the *Supreme Court Act 1970*. Associate Judges are usually assigned to perform work within either the Equity or Common Law Division, but may be asked to work outside the confines of these Divisions in the interests of flexibility.

The work of the Associate Judges generally involves hearing applications that arise before trial, certain types of trial work and work on proceedings that the Court of Appeal or a Judge may refer to them.

Applications that arise before trial include:

- applications for summary judgment;
- applications for dismissal of proceedings;
- applications for extensions of time to commence;
- proceedings under various Acts; and
- applications for the review of decisions of Registrars.

In the Common Law Division, Associate Judges conduct trials of actions for personal injury and possession of property. The Associate Judges also hear other trials (without a jury) that are referred to them by the Court of Appeal or a Judge, in addition to appeals from the Local Court and various tribunals. The Associate Judges also handle appeals against the determinations of costs assessors.

In the Equity Division, Associate Judges deal with proceedings under the *Family Provision Act 1982* and the *Property (Relationships) Act 1984*, and applications for the winding up of companies under the *Corporations Act 2001 (Commonwealth)*. They also deal with inquiries as to damages, or accounts referred to them by the Court of Appeal or Equity Judges, along with applications relating to the administration of trusts, and certain probate matters.

As at 31 December 2006, the Associate Judges were:

- The Honourable Associate Justice John Kennedy McLaughlin;
- The Honourable Associate Justice Bryan Arthur Malpass;
- The Honourable Associate Justice Richard Hugh Macready, and
- The Honourable Associate Justice Joanne Ruth Harrison.

The Registrars

Registrars to the Court are appointed under section 120 of the *Supreme Court Act 1970* pursuant to the provisions of the *Public Sector Management Act 2002*. The Chief Justice may also certify officers of the Supreme Court or Local Courts to act as deputy registrars of the Court from time to time.

Registrars are allocated to work within the Court of Appeal, the Court of Criminal Appeal, or to one of the Court's Divisions. However, they are permitted to work outside these boundaries if required.

Registrars are afforded limited powers of the Court under the *Supreme Court Rules 1970* and the *Uniform Civil Procedure Rules 2005*, and undertake some of the functions formerly performed by Judges and Associate Judges.

The work of the Registrars commonly includes:

- defended applications in relation to security for costs, discovery, interrogatories, provision of particulars and subpoenas;
- costs disputes if the amount in question is unlikely to exceed \$20,000;
- unopposed applications for the removal of cases to, or from, the District Court;
- conducting examinations under various Acts, including the *Corporations Act 2001 (Commonwealth)* and the *Proceeds of Crime Act 1987 (Commonwealth)*;
- dealing with applications for orders under many of the provisions of the *Corporations Act 2001 (Commonwealth)*, such as the winding up of companies;
- handling applications as referred to them by an Associate Judge;
- issuing court orders and writs of execution; and
- entering default judgments.

The *Supreme Court Rules 1970* and delegations under the *Civil Procedure Act 2005* permit registrars to directly assist the Judges in caseflow management. For instance, in the Court of Appeal, the Registrar deals with most interlocutory applications, excluding applications to stay judgment pending an appeal; in the Common Law Division, a Registrar conducts status and final conferences in the General Case Management List, and also assists the Possession List and Professional Negligence List Judges.

The Registrars may also be called upon to mediate cases. During 2006, ten of the Court's Registrars were qualified mediators and available to conduct mediations throughout the year on a rostered basis.

Deputy Registrars are rostered to act as Duty Registrar and provide procedural assistance to court users in the Registry each day. They also attend to the issue of court orders, writs of execution and other miscellaneous matters.

As at 31 December 2006, the Registrars were as follows:

Chief Executive Officer and Principal Registrar

Megan Greenwood

Manager, Court Services and Prothonotary

Leonie Walton (acting)

Registrar of the Court of Appeal

Peter Schell

Registrar in Probate

Jonathan Finlay

Registrar in Equity

Leonie Walton

Registrar of the Court of Criminal Appeal

Gabrielle Drennan

Assistant Registrar at Common Law

Bruce Howe

Senior Deputy Registrars

Paul Studdert

Nicholas Flaskas

Andrew Musgrave (on secondment)

Deputy Registrars

Emoke Durkin

Geoffrey Haggatt

Bhaskari Siva

Ramon Loyola

Joanne Gray

SUPPORTING THE COURT: THE REGISTRY

The Work of the Registry

The Court operates with the support of the registry that provides administrative and clerical support to the Court. In civil matters, the registry is responsible for: accepting documents filed at the Court; securing the custody of court documents including exhibits and documents produced under subpoena; listing matters for hearing; issuing court process; attending to the information needs of the Court's users by providing procedural guidance; maintaining the Court's physical files and computer records, and ensuring that all the necessary facilities are available for hearings. In criminal matters, the registry provides support in processing committals, bail applications, applications under Part 7 of the *Crimes (Appeal and Review) Act 2001* and Common Law Division criminal summary jurisdiction proceedings.

In respect of the Court of Appeal, the Registry provides specialist administrative and clerical support to the Court of Appeal's judges and offers procedural guidance to litigants and their representatives. Similarly, in Criminal Appeal matters, the Registry provides support to the Court of Criminal Appeal's judges and users, and also enforces orders concerning the custody of prisoners.

How the Registry is managed

The Chief Justice directs the priorities to be pursued by the Registry. In general, the priorities reflect the central aim of meeting the expectations of Court users competently, efficiently and professionally.

Day to day management of the Registry is handled by the Chief Executive Officer and Principal Registrar of the Court. In addition, the Chief Executive Officer is responsible for securing and managing the resources provided to the Court by the NSW Attorney General's Department, providing executive support to the Judges and Associate Judges and developing strategies for improving service delivery to the Court and its users. The Chief Executive Officer undertakes these duties in close consultation with the Chief Justice, other judicial officers, the Department, and representatives from key professional bodies and other Court users.

3

CASEFLOW MANAGEMENT

- Overview by jurisdiction
- Regional sittings of the Court
- Alternative dispute resolution

INTRODUCTION

The Court manages the flow of its cases from inception to completion in a number of different ways, and is continually looking to improve its processes and outcomes.

Caseflow management strategies are reflected in the *Uniform Civil Procedure Rules*, the Rules of the Supreme Court and the Practice Notes issued by the Chief Justice. The Judges, Associate Judges and Registrars work together to ensure that cases are resolved as efficiently and justly as possible.

Commonly, cases will be allocated to Registrars to establish the core arguments in dispute and determine when cases should progress to hearing before a Judge or an Associate Judge. A Registrar makes directions to ensure that the case is properly prepared for hearing. If an issue arises that falls outside the specified duties of a Registrar, the Registrar may refer that case to a Judge or an Associate Judge.

OVERVIEW BY JURISDICTION

Court of Appeal

New appeal cases are initially reviewed for competency and, if necessary, referred back to legal representatives to either substantiate the claim of appeal as of right, or seek leave to appeal. Applications for leave to appeal are examined to ascertain whether they are suitable for hearing concurrently with the argument on appeal.

Appeals are allocated a directions callover date before the Registrar when a notice of appeal is filed. At that callover, the appeal may be listed for hearing if the appellant has filed written submissions and the red appeal book. Case management may be ordered with respect to lengthy or complex appeals.

The Registrar case-manages and lists most appeals and applications for leave to appeal, however some cases may be referred to a Judge of Appeal for special case management. Urgent cases are expedited and can be heard at short notice, if appropriate. The Registrar in the Court of Appeal also deals with most interlocutory applications, except applications to stay judgments pending an appeal.

Mediation is offered to parties in appeals identified as capable of resolution by this process. Detailed statistics regarding the number of matters referred to mediation can be found in Appendix (ii).

Court of Criminal Appeal

Case management begins in the Court of Criminal Appeal when an appeal or application for leave to appeal is filed in the registry. The appeal or application is listed for callover within two weeks of filing. Callovers are held fortnightly, although special callovers can be held in urgent matters. At the callover, the presiding Registrar will fix a hearing date and make directions for the filing and serving of submissions by the parties.

Generally, three Judges hear an appeal or application. The Chief Justice may also direct that more than three Judges sit on an appeal or application, particularly in matters involving an important issue of law. In some circumstances, the Chief Justice may direct that two Judges hear an appeal against sentence. A single judge hears

sentence appeals from the Drug Court of New South Wales, and also deals with bail applications and other interlocutory applications in the Court.

Since 1 July 2002, pre-appeal management procedures have been implemented for sentence and conviction appeals to the Court of Criminal Appeal. Accused persons may initially lodge a Notice of Intention to Appeal, without specifying their grounds of appeal. The Notice of Intention to Appeal allows the accused person six months (or such longer time as the Court grants) to file an actual appeal. Transcripts and exhibits are now provided to accused persons free of charge to facilitate the preparation of an actual appeal.

The impact of these pre-appeal management procedures on disposal rates can be seen by comparison with previous years. For detailed statistical analysis of the effects these procedures have had on disposal rates, refer to the chapter entitled *Court operations*.

Common Law Division

Case management in the Division begins when a summons or statement of claim is filed in the registry. Each summons or statement of claim (with the exception of default matters) is given a return date before a Judge or Registrar and placed in a List. A Judge is appointed to manage each List, whilst the Common Law List Judge monitors all matters listed for hearing before a Judge. Registrars of the Division handle default matters administratively.

Common Law List Judge

The List Judge manages the progress of cases from Call-up until a trial judge is appointed. Judges and Registrars refer matters to the Call-up that are ready for hearing and a hearing date is allocated. At the Call-up, the Prothonotary considers a number of factors, including the availability of Judges, the type of matters, and estimates of duration, before listing matters for hearing.

The List Judge also hears any applications for adjournment. Justice Hall was the Common Law List Judge in 2006.

Common Law Duty Judge list

The Duty Judge is available each day to hear urgent applications, including applications for interlocutory injunctions, during and outside normal Court hours when required. Judges of the Division are rostered to act as the Duty Judge for a week at a time during law term. A Vacation Judge is rostered during the court vacation to perform this same role.

The Duty Judge also conducts an applications list each Monday. The applications in this list are matters that cannot be determined by an Associate Judge or a Registrar. These matters include appeals from the Local Court under the *Crimes (Local Courts Appeal and Review) Act 2001*, applications for restraining orders, applications for declaratory relief, and applications to dispense with a jury. Matters are initially listed at 9am before a Registrar to determine whether the application is ready to proceed. The Duty Judge may specially fix matters that cannot be heard on the Monday to later that week.

The Duty Judge determines interlocutory applications for restraining assets and issuing examination orders under the *Confiscations of Proceeds of Crime Act 1989*, *Criminal Assets Recovery Act 1990*, and *Proceeds of Crime Act 1987 (Commonwealth)*. The Duty Judge also considers, in chambers, applications seeking authorisation of warrants, such as those made under the *Listening Devices Act 1984*.

Associate Judges' list

The Associate Judges in the Common Law Division deal with statutory appeals from the Local Court (except under the *Crimes (Local Courts Appeal and Review) Act 2001*), the Consumer Trader and Tenancy Tribunal, and against costs assessors.

The Associate Judges also deal with applications for summary judgment and dismissal, applications for extension under the *Limitations Act 1969*, and opposed applications to transfer matters from the District Court. The Associate Judges may deal with other matters as outlined in Schedule D of the *Supreme Court Rules 1970*.

Note: Important changes to Case Management practises in the Common Law Division will be announced in 2007. Visit the Court's website www.lawlink.nsw.gov.au/sc for details.

Matters allocated to the Associate Judges' List are case managed by a Registrar daily at 9am. The Registrar refers applications to an Associate Judge when ready for hearing.

Lists of the Division

In addition to the above, the work of the Division is also distributed amongst a number of specialised Lists. These Lists (in alphabetical order) are:

- Administrative Law List;
- Bails List;
- Criminal List;
- Defamation List;
- General Case Management List;
- Possession List; and
- Professional Negligence List.

The Chief Justice appoints a specific Judge to be responsible for the management of a List throughout the year. The Judges responsible for the management of a list during 2006 are detailed below.

Administrative Law List

The Administrative Law List reviews decisions of government, public officials and administrative tribunals such as the Consumer Trader and Tenancy Tribunal. The Administrative Law List operates in accordance with the procedures outlined in Practice Note SC CL 3.

In 2006, Justice Hall was responsible for the management of the Administrative Law List

Bails List

Applications for bail or to review bail determinations can be made to the Supreme Court under the Bail Act 1978 in respect of any person accused of any offence, even if the trial will not be heard in the Supreme Court. These applications are listed throughout the year, including during the court vacation. Common Law Division Judges are rostered on a weekly basis to determine these applications.

Criminal List

Arraignment hearings are held each month during Law Term. The aim of the arraignment procedure is to minimise the loss of available judicial time that occurs when trials are vacated after they are listed for hearing, or when a guilty plea is entered

immediately prior to, or on the day of, the trial's commencement.

The arraignment procedure involves counsel at an early stage of the proceedings. This allows both the prosecution and defence to consider a range of issues that may provide an opportunity for an early plea of guilty, or shorten the duration of the trial. The procedures for arraignment are detailed in Practice Note SC CL 2. Justice Barr was the Criminal List Judge during 2006, assisted by Justice Whealy.

Defamation List

Section 7A of the Defamation Act 1974 sets out the respective functions of the Court and jury in defamation proceedings. An initial hearing is held before a jury to determine whether the matter complained of carries the imputation alleged and, if it does, whether the imputation is defamatory. A separate, subsequent hearing takes place before a Judge to determine whether any defence can be established and if damages are payable. This second hearing is only required if the jury determines that the matter complained of was defamatory.

The Defamation List was managed by Justice Nicholas during 2006. A Registrar assists by case-managing matters listed for directions. Practice Note SC CL 4 governs the operation of the List.

General Case Management (GCM) List

This List comprises all civil cases commenced by Statement of Claim that are not included in the Administrative Law, Defamation, Professional Negligence or Possession Lists. It includes money claims, personal injury claims, claims for possession (excluding land), breach of contract, personal property damage, malicious prosecution, and claims under the Compensation to Relatives Act 1897. These cases are case-managed by a Registrar who conducts status conferences and final conferences. At the status conference, the Registrar gives directions to ensure the case is ready for hearing by the compliance date. The procedures associated with the running of this List are set out in Practice Note SC CL 5. Justice Hoeben managed the GCM List during 2006.

Possession List

The Possession List deals with all proceedings for the recovery of possession of land. The management of the List encourages early resolution of cases through mediation, other alternative dispute resolution processes, or settlement. Case management is also used to clarify the real issues in dispute. Practice Note SC CL 6 applies to cases in this List. Justice Johnson was responsible for managing the Possession list during 2006.

Professional Negligence List

Claims against medical practitioners, allied health professionals (such as dentists, chemists and physiotherapists), hospitals, solicitors and barristers are allocated to the Professional Negligence List. Specialisation in the List allows the parties to focus on the real issues under dispute in these types of claims. A Registrar monitors cases at regular conference hearings. Conference hearings provide an opportunity for parties to discuss outstanding issues in the case, and provide a forum for mediation between the parties. Practice Note SC CL 7 applies to this List.

The Professional Negligence List Judge hears applications and makes directions according to the specific needs of each matter. Mr Justice Studdert managed the List during 2006.

Equity Division

Several general lists operate in the Equity Division to assist in managing the Division's caseload:

- Expedition list;
- One Day list;
- Equity Duty Judge list;
- General list;
- Long Matters list, and
- Associate Judges' list.

Expedition list

A case is expedited when sufficient urgency is shown. When the application is granted, the Judge gives directions and monitors the preparations for hearing. The Expedition list Judges heard all applications for expedited hearings in 2006. The same Judge hears the case when it is ready to proceed. Mr Justice Young was the Expedition list Judge during 2006.

One Day list

Cases in this list are fixed for hearing before a Judge when judicial time becomes available at short notice. A Registrar maintains this list, which includes cases that will be ready for hearing with three days' notice. These are mostly cases of a less complex kind that can usually be disposed of within one day. The One Day list is called over before the Expedition list Judge on the last Friday of each month immediately after the Expedition list.

Equity Duty Judge list

The Duty Judge mainly hears urgent applications, sometimes outside normal court hours. The Duty Judge also hears uncontested or short cases. Judges of the Division are ordinarily rostered as Duty Judge for a two-week period. There is provision for the Duty Judge to fix an early hearing date for a case and engage in pre-trial management of that case. The Duty Judge would make use of this provision if he or she considers that an early final hearing would result in a substantial saving of the Court's time. The work carried out by the Duty Judge is extremely varied and may include urgent applications by the Department of Community Services to intervene where a child's welfare is involved, or property and commercial disputes.

General list

Other cases are placed in the General list when set down for hearing (if commenced by a statement of claim), or when the Registrar considers the matter ready for hearing (if commenced by summons). Provided the estimated hearing length is less than six days and there are fewer than 100 matters already listed, the Registrar will place the matter in the next periodic callover. At the callover, the Registrar allocates a date for provisional hearing of the case, as well as a time for pre-trial conference, ordinarily before the trial judge.

Long Matters list

Matters in the General list are placed in the Long Matters list when the Registrar becomes aware a matter may require more than six hearing days. Parties are required to file a synopsis of facts of the case and the issues under dispute. On receipt of this synopsis and any other details required by

the Registrar, the matter will be referred to a Judge who will then conduct case management hearings and fix the hearing date.

Associate Judges' list

The work of the Equity Division Associate Judges includes dealing with contested procedural applications and conducting inquiries as directed by Judges. Their work also includes the hearing of most applications under the *Family Provision Act 1982*, the *Property (Relationships) Act 1984*, and certain provisions of the *Corporations Act 2001 (Commonwealth)*. An Associate Judge conducts a monthly callover of matters, at which time a hearing date (usually in two months' time) is allocated. An Associate Judge also handles weekly referrals from the Registrar, determining those that can be dealt with immediately, and adjourning the balance. The Registrar only refers matters where the hearing time is not expected to exceed an hour. More complex matters are listed in the next callover of proceedings in the Associate Judges' list. Urgent referrals, such as the extension of a caveat, may be made at any time.

Lists of the Division

The Equity Division's caseload is also managed by allocating certain matters to specific Lists according to the nature of the claims. These Lists are set out below in alphabetical order:

- Admiralty List;
- Adoptions List;
- Commercial List;
- Corporations List;
- Probate List;
- Protective List;
- Revenue List, and
- Technology and Construction List.

The Chief Justice appoints a Judge to each of these Lists to bear responsibility for monitoring the List throughout the year. The Judges allocated to each List during 2006 are noted below.

Admiralty List

The Admiralty List deals with maritime and shipping disputes. It is administered in the same manner as the Commercial List (see below). Justice Palmer had responsibility for this List in 2006.

Adoptions List

This List deals with applications for adoption orders and declarations of the validity of foreign adoptions under the *Adoptions Act 2000*. Most applications are unopposed. Once all supporting affidavits are filed, a Judge will deal with the application in the absence of the public, and without the attendance of the applicants or their lawyers. Unopposed applications require close attention for compliance with formal requirements, but there is little delay. A small number of contentious hearings take place in court in the absence of the public. Most of these relate to dispensing with consent to adoption. The Registrar in Equity deals with requests for information under the *Adoptions Act 2000*. Justice Palmer was the List Judge during 2006.

Commercial List

The Commercial List is concerned with cases arising out of transactions in trade or commerce. The caseload management strategy applied to the running of this List aims to have matters brought on for hearing quickly by:

- attending to the true issues at an early stage;
- ensuring witness statements are exchanged in a timely manner; and
- intense monitoring of the preparation of every case.

There is also adherence to the allotted hearing dates, and hearings are continued to conclusion, even though time estimates may be exceeded. Justice Bergin was the List Judge in 2006, assisted by Justice Einstein until August 2006.

Corporations List

A Judge sits each day of the week to hear most applications and hearings under the *Corporations Act 2001 (Commonwealth)* and related legislation. The Registrar may refer applications to the Judge on a Monday. The Registrar determines routine applications to wind-up companies, applications for leave to proceed against companies in liquidation (limited to personal injury actions) and applications to reinstate companies.

The Judge will give directions and monitor preparations for hearing in longer matters, as well as in other complex corporate cases. Cases managed in this List are generally given a hearing date as soon as they are ready.

The Corporations List Judge during 2006 was Justice Austin in conjunction with Justice Barrett and Justice White.

Probate List

The work performed by the Judges and the Probate Registry consists of both contentious and non-contentious matters. The majority of non-contentious cases are dealt with by the Registrar and Deputy Registrars. This includes the granting of common form probate where applications are in order and unopposed.

Both the Probate List Judge and the Registrars have procedures whereby some supervision is kept over executors in the filing of accounts, and ensuring beneficiaries are paid.

In court, the Registrar considers routine applications, and applications concerning accounts. Should a routine application require a decision on a matter of principle, the application is referred to the Probate List Judge.

The Probate List Judge sits once a week to deal with complex applications. If an application can be dealt with quickly, it is usually heard immediately. Others are set down for hearing, normally within a month.

Contentious matters are monitored by either the Judge or a Registrar. Contentious matters commonly include disputes as to what was a testator's last valid will. When these cases are ready to proceed, they are placed in the callover to receive a hearing date before an Equity Judge.

The Probate List Judge meets with the Registrars on a regular basis to discuss the efficient working of the List. Mr Justice Windeyer was the Probate List Judge during 2006.

Protective List

The work of this List involves ensuring that the affairs of people deemed incapable of looking after their property, or themselves, are properly managed. The List also deals with appeals from the Guardianship Tribunal of NSW, along with applications (in chambers) by the Protective Commissioner for advice regarding the administration of estates. The Court also

considers applications regarding missing persons' estates and, in certain circumstances, may order that their estate be managed under the *Protected Estates Act 1983*.

Often, the issues under dispute in the Protective List are of a highly sensitive nature. The Court acknowledges this situation, and endeavours to be as flexible as permissible in handling these proceedings with a minimum of formality. However, when there is a dispute which cannot be solved in this way, it is decided according to law.

The Senior Deputy Registrar dedicated to the Protective List sits in court one day a week. The Deputy Registrar may submit a case to be determined by the Judge without further appearance or adjourn a case into the Judge's list. A Judge sits once a week to deal with any referred cases. Most cases are considered on the Judge's usual sitting day as soon as the parties are ready. Longer cases, however, are specially fixed, usually within one month.

The Protective List Judge consults regularly with the Deputy Registrar to discuss the efficient working of the List. Mr Justice Windeyer was the Protective List Judge during 2006.

Revenue List

The Revenue List is a list dedicated to the hearing of taxation matters. The List was created to ensure that these matters are heard as efficiently as possible. Matters in the Revenue List are heard by a specific Equity Division Judge each month, and allocated the earliest hearing date possible before this same Judge.

Justice Gzell handled the Revenue List during 2006.

Technology and Construction List

Cases involving complex technological issues and disputes arising out of building or engineering contracts are allocated to this List. The List is administered by the same Judges and in the same manner as those in the Commercial List.

REGIONAL SITTINGS OF THE COURT

The Court of Criminal Appeal sat in Bathurst in 2006. First instance criminal trials were conducted in the following regional locations: Newcastle, East Maitland, Dubbo, Port Macquarie, Broken Hill, Orange and Wollongong. Criminal trials will continue to be held in regional venues as required.

Civil hearings were held at regional venues by special fixture at the following locations during the year: Armidale, Lismore, Newcastle, Orange, Wagga Wagga, and Wollongong.

All proceedings are managed from Sydney irrespective of where the proceedings were commenced or the venue for hearing.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution is a broad term that refers to the means by which parties seek to resolve their dispute, with the assistance of a neutral person, but without a conventional contested hearing before a Judge or Associate Judge. The two alternative dispute resolution processes most commonly employed in Supreme Court proceedings are mediation and arbitration.

Mediation

Mediation is available for most civil proceedings pursuant to Part 4 of the *Civil Procedure Act 2005*. Mediation is not available in criminal proceedings.

The role of the mediator is to assist parties in resolving their dispute by alerting them to possible solutions, while allowing the parties to choose which option is the most agreeable. The mediator does not impose a solution on the parties. The Court made ten of its qualified Registrars and Deputy Registrars available throughout 2006 to conduct mediations at specified times each week. Alternatively, parties may use private mediators.

A matter may proceed to mediation at the request of the parties, or the Court may refer appropriate cases to mediation, with or without the consent of parties. If the Court orders that a matter be referred to mediation, there are several ways in which a mediator may be appointed. If the parties are in agreement as to a particular mediator, then they can ask the Court to appoint that mediator,

who may also be a Registrar of the Court. If parties cannot agree upon a mediator, then they should attempt to agree on how the Court can appoint a qualified mediator. Some options are set out in Practice Note SC Gen 6.

Settlement of disputes by mediation is encouraged in the Court of Appeal, and in the Common Law and Equity Divisions. Parties may derive the following benefits from mediation:

- an early resolution to their dispute;
- lower costs; and
- greater flexibility in resolving the dispute as the solutions that may be explored through mediation are broader than those open to the Court's consideration in conventional litigation.

Even where mediation fails to resolve a matter entirely and the dispute proceeds to court, the impact of mediation can often become apparent at the subsequent contested hearing. Mediation often helps to define the real issues of the proceedings and this may result in a reduction in eventual court time and, consequently, lower legal costs.

Arbitration

Arbitration involves the hearing and adjudication of a dispute by an arbitrator, rather than by a Judge or Associate Judge. Determination through arbitration of a dispute regarding recovery of damages is permitted under Part 5 of the *Civil Procedure Act 2005*.

The Chief Justice appoints experienced barristers and solicitors as arbitrators following a nomination by their respective professional associations. Arbitrators generally hold their appointment for two years, and they may be reappointed for further periods.

In contrast to a mediator, an arbitrator imposes a solution (an award) on the parties after considering the arguments and evidence presented.

An award of an arbitrator becomes a final judgment of the Court 28 days after the award has been given, providing no party to the arbitration has applied within that time for a rehearing. If a party applies for a rehearing, then the dispute is referred for case management, to be heard afresh before a Judge.

4

COURT OPERATIONS

- Overview of operations by jurisdiction
- Time standards

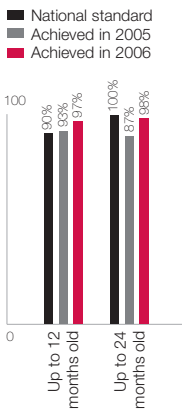
FIGURE 4.1

Court of Appeal achievements against time standards for -pending caseload



FIGURE 4.2

Court of Criminal Appeal achievements against time standards for pending caseload



OVERVIEW OF OPERATIONS BY JURISDICTION*

* to be read in conjunction with Appendix (ii)

Court of Appeal

The number of new cases coming to the Court of Appeal was 28 per cent lower in 2006 than in 2005. This reduction had been foreshadowed by the clear trend during 2005 of fewer lodgments of holding appeals and holding summonses. That trend eased during 2006.

The disposal rate decreased by 18 per cent compared with the rate in 2005. This may be a flow-on effect from the introduction of the *Civil Liability Act in 2002*, now resulting in a decreased proportion of the Court of Appeal's work arising from damages awarded in personal injury cases, and an increased proportion being more complex and lengthy appeals, such as those arising from decisions in commercial disputes. In 2006 there were 83 cases finalised by concurrent hearing (where parties elect to have a single hearing for determination of the leave application and, if leave is granted, the related appeal), down from 107 cases in 2005. Among the disposals of substantive appeals, 243 were finalised by delivery of reserved judgments, and 24 were finalised by ex tempore judgments.

The reduced volume of new cases in 2006 is principally responsible for the 22 per cent reduction in the size of the pending caseload over the year. It also allows older cases to have greater prominence in the age profile of the overall caseload. While the pending caseload reduced from 490 to 381 cases during 2006, the number of cases older than 24 months has remained limited to ten. Against the national time standards the age profile of the Court of Appeal's pending cases at the end of this year remains close to the 2004 and 2005 levels, and to the nominated standards (see Figure 4.1).

Court of Criminal Appeal

The number of new cases coming to the Court of Criminal Appeal was 14 per cent lower in 2006 than in 2005.

The disposal rate for 2006 remained stable. As in 2004 and 2005, 91 per cent of criminal appeals finalised during 2006 required a substantive hearing of the appeal. The proportion of cases finalised by abandonment or withdrawal of the appeal remained at the 2005 level of nine per cent.

At the end of 2006 the number of pending cases was further reduced (below the record level achieved in 2005). The continued high level of disposals and the reduction in new work have contributed to this. The age profile of the pending caseload has further improved against the national standards (see Figure 4.2). Against the 12-month standard the position has improved from 93 per cent at the end of 2005 to 97 per cent at the end of 2006, well above the national standard of 90 per cent. Against the 24-month standard the position has improved slightly to 98 per cent, closer to the national standard. Of the 180 appeals pending at the end of 2006, only three were older than 24 months.

Common Law Division criminal cases

The caseload and performance statistics for 2006 and 2005 are not directly comparable with statistics for previous years because the Court applied new counting rules from 1 January 2005. The changes to the counting rules are explained in Appendix (ii).

During 2006, 104 defendants entered the Criminal List, compared with 94 during 2005. Most defendants enter a plea of 'not guilty' at arraignment, and those cases are then listed for trial. Trial dates were allocated for 92 defendants at arraignments lists conducted during 2006. During 2006, 104 defendants' cases were finalised.

At the end of 2006 there were 93 defendants with cases pending in this List, the same number as at the end of 2005, and a reduction from the 125 defendants (represented as 99 cases) pending at the end of 2004. The age profile for pending cases in this List has improved significantly against the national standards during 2006 (see Figure 4.3). Against the 12-month standard, the position improved from 73 per cent at the end of 2005 to 81 per cent at the end of 2006. Against the 24-month standard, it improved from 86 per cent to 96 per cent. There were four pending defendants whose cases were older than 24 months at the end of 2006, an improvement from 13 at the end of 2005. For two of the four defendants there have been issues delaying the start of trial. For the remaining two defendants, earlier trials had collapsed and new trials have been ordered. When evaluating the Court's performance against the national standards, it is worth bearing in mind that almost all indictments in the Court's Criminal List are for offences of murder, manslaughter or cases where a life sentence may be imposed, whereas the range of charges routinely brought in supreme courts in other states and territories is broader.

This year, similar to last year, hearing estimates averaged between four to six weeks per trial, and some trials were estimated to need up to 23 weeks of hearing time. This represents a considerable demand for judicial time. By applying acting judicial resources, the Court was able to allocate more hearing time for criminal trials during 2006. Without acting judges, the listing delays would have increased and significantly added to overall delay in finalising cases.

During 2006, listed trials for six defendants either collapsed or were adjourned. No trial was "not reached". There is limited over-listing of criminal trials. The Court is aware of the financial impact for the various publicly funded agencies involved in the criminal justice system, and of the emotional and financial impact for family of the victim and for witnesses, when trials are not able to run. All options are explored to attempt to start a listed criminal trial.

Common Law Division civil cases

The civil work of the Common Law Division can be separated into two groups: defended cases (including the specialist case-managed lists) and uncontested cases (such as those proceeding to default judgment, and applications dealt with administratively by Registrars and Registry officers). At the end of 2006, defended cases represented 38 per cent of the pending civil caseload of the Common Law Division, similar to the position last year, and down from 60 per cent at the end of 2004. The change since 2004 is a direct result of increased filings in the Possession List.

Overall, Common Law Division civil filings increased by six per cent in 2006. This followed a 37 per cent increase in 2005 and a 25 per cent increase during 2004. The increase principally comes from cases that proceed as uncontested matters in the Possession List – these filings were ten per cent higher in 2006 than in 2005, but 150% higher than 2002. Filings that proceeded as defended cases in the Division increased by 14 per cent.

Taken as a whole, the disposal rate was 23 per cent higher in 2006 than in 2005 (the 2005 disposal rate excludes the disposal of 282 related and effectively inactive cases seeking damages for injuries arising from silicon implants). This increase is largely due to the increased volume of uncontested cases finalised in the Possession List. Among the defended cases the disposal rate was consistent with 2005 (again excluding the disposal of the 282 related and inactive silicon implant cases from the 2005 disposal rate). Trends in disposal rates are not expected to instantly replicate trends in filing rates. This is because some time is required to progress a case to any form of finalisation, and that time will vary from case to case, according to the extent and nature of the issues in dispute.

Overall, the Division's pending caseload increased during 2006 (see Figure 4.4). The number of pending defended cases grew by four per cent. This reflects increased filings in the possession list, most of which are resolved without hearing.

FIGURE 4.3
Criminal List achievements against time standards for cases of pending defendant

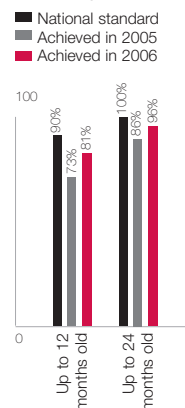
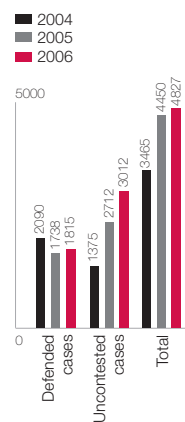


FIGURE 4.4
Common Law Division pending civil caseloads at 31 December



Of the 531 cases listed for hearing in 2006, 45 per cent proceeded to hearing and 37 per cent settled after being listed for hearing. Since 2004, the proportion of heard cases has risen and the proportion of settled case has fallen. This has implications for judicial hearing time and also for case duration, because more of the cases listed for hearing will also require judgments to be written.

So that available judicial time is optimally used, the Common Law Division's civil hearings are over-listed. This has a risk that some cases may be "not reached". In 2006 the proportion of "not reached" cases was eight per cent, compared with five per cent in 2005.

In most lists, median finalisation times have either improved or been maintained. Median finalisation time describes the age at finalisation of cases disposed during the year; it does not predict disposal times for pending or future cases. Median waiting time increased in three lists. The increase in the Summons List (for criminal matters) is arguable – those cases typically relate to recovery of proceeds of crime and are re-opened frequently, which distorts the age calculation. The more significant increase to address was that for cases proceeding by default – delay in processing those cases was monitored throughout 2006 and, as waiting times increased, more registry officers were trained and made available to limit further processing delays.

Equity Division

The rate of filing in the Equity Division has remained stable.

The reported disposal rate overall was nine per cent higher than in 2005. Consequently, the pending caseload has reduced over the year by 11 per cent.

The figures for disposals and pending cases in the Division's two largest lists, the General List and Corporations List, are not considered to be fully reliable. Those lists cannot be monitored sufficiently to eliminate counting of cases that have been re-opened after finalisation of the substantive issues. A significant number of cases may have more than one disposal recorded

against them. This counting problem is expected to diminish when the JusticeLink (formerly CourtLink) system becomes available for civil cases.

During 2006 there were 398 cases listed for hearing (as well as matters before the Duty Judge, referrals to a Corporations Judge, Adoptions List matters, Protective List matters and one-day matters listed on short notice). This compares with 555 cases during 2005. While 157 fewer cases were listed in comparison with 2005, there was little change in the number of cases heard (198 in 2006, compared with 201 in 2005). The proportion of cases that settled after taking a listing reduced: 127 (32 per cent) in 2006, compared with 250 (45 per cent) in 2005.

A large proportion (approximately 40 per cent) of the disposals within the Equity Division are achieved in the Registrar's lists, and are unlikely to have been listed before a Judge or an Associate Judge).

The median case finalisation times are shown in Appendix (ii). Median finalisation time describes the age at finalisation of cases disposed during the year; it does not predict disposal times for pending or future cases. Overall, these times have either improved or remain within reasonable levels.

Registrars deal with the uncontested applications relating to probate matters. A total of 22,079 applications were filed during 2006. Where an application for a grant of probate, letters of administration or re-seal (of a probate grant) meets all procedural requirements, the grant is usually made within two working days.

Use of alternative dispute resolution

During 2006, there were 487 referrals to mediation, of which 286 were referrals to court-annexed mediation conducted by the Court's Registrars. The court-annexed programme continued to achieve a healthy percentage of settlements.

During the financial year ending 30 June 2006, the Court ran a pilot program to increase use of mediation in Court of Appeal proceedings. In setting up the pilot program, the Court acknowledged that mediation in appeal proceedings presented special challenges – for

example, in appeal proceedings one party has already “won” once and may perceive mediation as negotiating away part of that win. However, the Court had concerns about litigants reaching a point where the costs of the litigation are out of proportion to the amount originally in dispute, and about use of Court of Appeal hearing time and judgment writing time on matters that are essentially quantum re-distribution cases.

The Attorney General’s Department provided \$50,000 to fund the Court of Appeal mediation pilot program – this was used to subsidise the mediation costs in appropriate cases that used external mediators. A subsidy of up to \$2,500 was available per case. Twelve cases used the program, and seven of those cases settled at the mediation. Of the five cases that did not settle, there were three in which it was possible for mediation to reduce the number of grounds of appeal for hearing (those cases having not yet been heard) – this was achieved in one of the three possible cases. In all five cases it was possible for mediation to reduce the number of grounds for judgment – this was achieved in two of the five cases. The results of the pilot program demonstrated that mediation referral can bring benefits of early settlement, or reduced hearing and judgment writing time in suitable Court of Appeal proceedings.

Arbitration activity remains very low. Only one case was referred to arbitration this year. The number of arbitration referrals has progressively declined since 1997, when the District Court’s jurisdiction expanded to include most of the work that had typically been arbitrated in the Supreme Court.

The statistics for mediation and arbitration are detailed in Appendix (ii).

TIME STANDARDS

For its appellate courts and for the Criminal List, the Court’s performance in dealing with cases in a timely way is now reported in terms of the age of the pending caseload. Achievement for 2006 against national standards is shown in Appendix (ii).

Other courts and organisations may use different methods for reporting timeliness of case handling, and statistics are not necessarily comparable. Filings and disposals may be dealt with in different ways. To cite criminal cases as an example, the District Court of New South Wales reports performance in terms of the time between committal and the commencement of trial, while the Australian Bureau of Statistics produces national statistics that report performance in terms of the time from committal to acquittal or sentencing.

The Court’s timeliness reporting for criminal matters (including criminal appeals) aligns with the methods used by the Productivity Commission in its annual *Report on Government Services*. Timeliness reporting for the Court of Appeal is also aligned with the methods used by the Productivity Commission, with the exception that reporting here is confined to those cases lodged in the Court of Appeal (rather than covering all civil cases that are appellate in nature). Measurement of the age distribution within a pending caseload shows a current position that reflects the degree of success of delay reduction strategies, and helps identify areas for further strategic management.

For the civil work of the Common Law Division and for the Equity Division, the Court has determined that it will report on the age distribution within those pending caseloads once the JusticeLink (formerly CourtLink) system is able to provide precise and timely statistics on the age of those cases. Current systems are unable to provide statistics of sufficient detail and accuracy for these two areas of the Court’s work, which represented approximately 8,500 pending cases at the end of 2006 (excluding non-contentious probate applications). Once a year the Court completes a one-off analysis, using special counting rules, to provide an annual estimate (as at 30 June) of the age distribution for these cases as a single group to the Productivity Commission for publication in the *Report on Government Services*.

- Judicial officer education
- Public education programme
- The role of the Public Information Officer

JUDICIAL OFFICER EDUCATION

Many judicial officers updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Some of the programmes are tailored specifically to the Court's needs, whilst others target the international legal community. An overview of some of the educational activities completed during 2006 appears below. Please refer to Appendix (iv) for a more comprehensive list of "Other Judicial Activity" during 2006.

Domestic activities

- In January, 15 Judges attended the Supreme and Federal Courts Judges' Conference in Brisbane. Justice Beazley presented a paper entitled *A Step Too Far? Reconciling the Concepts of Duty of Care and Breach*, and Justice Bell participated in a panel discussion (chaired by the Hon Peter Underwood AO, Chief Justice of Tasmania) concerning criminal jury trials. Other sessions during the Conference covered the following topics: *Judicial Life, Law, Literature and Other Things* presented by the Hon Justice Ian Callinan AC, High Court of Australia; *The Future of Judging: Judges on the Karma Wheel* presented by the Hon Justice Marilyn Warren AC, Chief Justice of Victoria; *The Jury Project: Communicating with the Jury* presented by Professor James Ogloff, Monash University; *What Kind of Society are we Becoming? Implications for the Judiciary of Recent Cultural Changes* presented by Mr Hugh Mackay; *The Future of Copyright on the Internet* presented by Professor Brian Fitzgerald, Queensland University of Technology, and *Judges and the Media - An Uneasy Relationship* presented by Professor John Hennigham. Professor Kevin Clements also chaired a session on the quest for justice and peace in the Solomon Islands and Vanuatu.
- In July, seven Judges attended the International Society of Criminal Law Conference in Brisbane. Sessions at the four-day Conference covered the following issues: pre-trial issues (preventative detention of terrorism suspects, determination of an accused's fitness to stand trial, bail and the impact of pre-trial publicity); examination of the advantages and

disadvantages of specialist criminal courts; reducing the incidence of wrongful convictions; law making and overcriminalisation; sentencing (consistency, guideline judgments, alternatives to incarceration, impact of the media, indigenous offenders, judicial fact-finding, the victim's role and rights, mediation in criminal matters), and post-sentence issues (prisoner rehabilitation, mandatory sentencing and sex offender registers). Speakers at the Conference included the Hon Sir Anthony Mason KBE AC; the Hon Justice J. J. Michel Robert, Chief Justice of Quebec; the Hon Justice J. A. Jerrard, Queensland Court of Appeal; Dr Ben Saul, University of NSW and Mr Brian Opeskin, Deputy President of the Australian Law Reform Commission.

- In August, 40 Judges and two Associate Judges attended the Supreme Court Annual Conference in Leura. The three-day programme included sessions on: *Developments in Company Law in the UK* presented by the Right Honourable Lady Justice Arden DBE; Aspects of Estoppel presented by the Honourable Justice Handley AO; *Development in Criminal Trial* presented by the Honourable Justice Howie; *The Proposed Replacement of the Family Provision Act 1982* presented by the Honourable Justice Hodgson; *Division of Assets Between De Facto Partners* presented by the Honourable Mr Justice Young AO; *Policy Issues for the Media* presented by Mr Sam North and Mr Tim Palmer; *The Impact of the Civil Liability Reforms on the Fundamental Principles and Policies of the Common Law of Negligence* presented by Associate Professor Barbara McDonald; *The Constitutional Implications of Terrorism Legislation* presented by the Honourable Michael McHugh AC QC; *Children Giving Evidence* presented by the Honourable Bob Debus MP and Associate Professor Kay Bussey; and *Terrorism Overview* presented by Commissioner Michael Keelty APM.

- The Court initiated a new programme of occasional seminars on topics of interest to inform judges about current developments and emerging trends, and to encourage the exchange of information about common experiences. In 2006, five seminars were attended by a total of 72 Judges and Associate Judges: the Honourable Justice McClellan presented a paper entitled *The New Anti-Terrorism Legislation*; his Honour Acting Judge Chesterman presented a paper entitled *Suppression Orders: Principles, Practices and Problems*, Dr Judy Cashmore and the Honourable Justice Johnson presented a session on *Child Sexual Assault*; the Honourable Justice Whealy presented a paper entitled *Instructing the Jury in Complex Commercial Trial*, and representatives of the NSW Police presented a Listening Devices Demonstration.

International activities

- In May, four Judges attended the International Academy of Estate and Trust Law Conference in Dublin. The Conference programme was divided into four sections covering the following topics: giving trust functions to non-trustees; charitable organisations operating outside their national boundaries; domicile and residence: its meaning, use and limits, and recent developments in professional practice concerning terrorism and tax fraud. Pre-eminent authorities on estate and trust law from all over the world spoke at the Conference including: The Hon Lancelot John Priestley QC (Australia), Professor Maurizio Lupo (Italy), Dr Friedrich Schwank (Austria), and Professor Jeffrey A. Talpas (Canada).
- In July, the Chief Justice led a judicial delegation to Japan which included judges of the Supreme Courts of New South Wales, Victoria, Queensland, Western Australia, the ACT and the Federal Court. The delegation was an official component of the 2006 year of exchange, declared by the governments of Australia and Japan to mark the 30th anniversary of the Treaty of Friendship between the two nations. Justices McClellan and Bergin were members of the delegation. During the visit, the Chief Justice presented (with Justice Nettle of the Victorian Court of Appeal) a paper to judges of the Supreme Court of Japan entitled *Participation of the General Public in the Criminal Case Procedure*. Justice McClellan also addressed the judges regarding Use of Expert Testimony in Civil Cases (co-presented with Justice Steytler, Supreme Court of Western Australia). The delegation also visited the Tokyo High/District Court where they met with several judicial officers, including the President of the Tokyo High Court, and observed ongoing court cases in the Criminal and Commercial divisions. Before concluding their visit, the delegation visited three educational institutions: the Training and Research Institute for Court Officials, Sophia University Law School and Chuo Law School.
- In August, the Chief Justice attended the Annual Conference of Malaysian Judges at the invitation of the Chief Justice of Malaysia. As requested, the Chief Justice presented a paper on Case Management in NSW. The other invited lecturer at the Conference was Imam Faisal Abdul Rauf, of the New York Mosque, who addressed the judges on the relationship between secular and Sharia law.
- In November, Justice McClellan, Chief Judge at Common Law, attended the International Symposium on Judicial Review in China and presented a session entitled *Australian Administrative Law*. Other speakers at the Symposium addressed the following issues: Professor Christopher Forsyth, Cambridge University, discussed judicial review in England; Professor Paul Craig, Oxford University, presented a paper entitled China, Judicial Review and the WTO; Professor Ye Bifeng, Shanghai Jiao Tong University, presented a paper on statutory interpretation by courts in administrative litigation; Mr Yin Changping, Presiding Judge of Administrative Court, Hangzhou Intermediate Court in Zhejiang Province, presented a paper promoting amendments to administrative law, and Mr Lin Zhenhua, Vice Presiding Judge of Administrative Court, Guangdong High People's Court, spoke regarding regulation of the intensity of judicial review in courts.

PUBLIC EDUCATION PROGRAMME

The Court's Registrars address secondary school students and community groups regarding the Court's jurisdiction and daily operations. The lectures culminate in the groups observing a Supreme Court trial. Demand for these group talks remains high, particularly amongst secondary school Legal Studies students. In 2006, the Registrars addressed over 1,500 students and members of the public over the course of 105 scheduled talks conducted during the year.

The Court's public education programme also extended to participating in Law Week 2006: *A Fun Way to Learn about the Law and Sydney Open 2006*, a biennial event organised by the Historic Houses Trust. The activities offered by the Court included architectural tours of the King Street Complex and an online questionnaire focussing on the Court's history and origins.

THE ROLE OF THE PUBLIC INFORMATION OFFICER

The Court's Public Information Officer (PIO) is the principal media spokesperson for the superior NSW courts and provides a professional court-media liaison service.

The major role of the position is to provide the media with information about court proceedings in the NSW Supreme Court, the Land and Environment Court, the Industrial Relations Commission of NSW and the District Court of NSW.

The PIO works with the media to ensure that judicial decisions are correctly interpreted and reported to the community, and that initiatives taken by the courts to enhance access to justice are widely promoted.

The PIO is also responsible for ensuring that media outlets are alert to any suppression orders issued in proceedings, and that they are familiar with the terms and impacts of these orders.

The distribution of, and adherence to, suppression or non-publication orders is critical as the media's failure to acknowledge them in their coverage could compromise proceedings.

During 2006, the PIO handled 2,131 enquiries from the media – a 63 per cent increase over the previous year. Of these:

- 87.5 per cent related to Supreme Court matters;
- 11 per cent related to District Court matters, and
- 1.5 per cent of inquiries related to other courts, including the Industrial Relations Commission and the Land and Environment Court.

Of the 1,866 media inquiries relating to the Supreme Court: 65.5 per cent were from Sydney metropolitan journalists/reporters (major newspapers, radio and TV stations); 17 per cent were from interstate or international journalists, specialist/trade publications or members of the public; 12.5 per cent were from journalists at NSW regional newspapers, radio and TV stations, and five per cent were from journalists at Sydney suburban newspapers.

6

OTHER ASPECTS OF THE COURT'S WORK

- Uniform Civil Procedure Rules
- JusticeLink (formerly CourtLink)
- Law Courts Library
- Admission to the Legal Profession and appointment of Public Notaries
- Admission under the Mutual Recognition Acts
- Administration of the Costs Assessment Scheme
- Pro Bono scheme
- Judicial Assistance Program

UNIFORM CIVIL PROCEDURE RULES PROJECT

The Uniform Civil Procedure Rules project commenced in 2003 when the Attorney General's Department developed a cross-jurisdictional Working Party, chaired by Mr Justice Hamilton. The Working Party's chief aim was to consolidate provisions about civil procedure into a single Act and develop a common set of rules for civil processes in the Supreme, District and Local Courts.

This aim was substantially achieved through the commencement last year of the *Civil Procedure Act 2005* and *Uniform Civil Procedure Rules*. A Uniform Rules Committee was established under sections 8, 17 and Schedule 2 of the Act. The Committee is chaired by the Chief Justice, and the Court is also represented by the President of the Court of Appeal, Mr Justice Hamilton and Justice Hoeben.

At this stage, the Act and Rules do not extend to Court of Appeal proceedings or those placed in specialist lists within the Court's civil jurisdiction. Work will continue towards incorporating these matters into the uniform legislation.

JUSTICELINK (FORMERLY COURTLINK)

The Court continued to be actively involved in the NSW Attorney General's Department's JusticeLink project during the year. The work of the JusticeLink Steering Committee has proven particularly valuable in ensuring that JusticeLink will meet the needs of the Court. The Committee is an initiative of the Department and includes representatives from the Supreme, District and Local Courts. The following judicial officers and registry staff represented the Supreme Court during 2006:

- The Honourable Mr Justice Hamilton;
- The Honourable Justice Howie;
- The Honourable Justice Gzell;
- The Honourable Associate Justice Macready,
and
- Ms Megan Greenwood, Chief Executive Officer
and Principal Registrar

Significant progress was made in 2006 in respect of electronic services ("e-services"). Building upon the success of the pilot project in 2005, the Court widened its invitation to all legal practitioners interested in electronically filing documents in Corporations and Possession list matters. At the end of 2006, over 5,000 documents had been filed electronically. Work will continue in 2007 to expand the application of e-filing and the range of e-services made available to users.

LAW COURTS LIBRARY

The Law Courts Library is a legal resource and information centre to the Judges, Associate Judges and Registrars in the Law Courts Building. The Library offers: legal reference and research services and guides; access to a comprehensive range of electronic resources and services; guides to the Library's collections and resources; legal research training; document delivery and inter-library loan services, and an online current awareness service.

The NSW Attorney General's Department and the Federal Court of Australia jointly fund the Law Courts Library. There are two committees that oversee the operations of the Library. These committees are the Operations Committee and the Advisory Committee.

The Operations Committee comprises an equal number of representatives from the NSW Attorney General's Department and the Federal Court of Australia. The Operations Committee is responsible for setting budget priorities, revenue, business planning and Library policy. The Advisory Committee consists of three Judges from the Federal Court of Australia and three Judges from the Supreme Court of NSW. The Advisory Committee consults with the Operations Committee on matters of budget, collection development and service provision. During 2006, the Supreme Court representatives on the Advisory Committee were:

- The Honourable Justice Basten;
- The Honourable Justice Ipp, and
- The Honourable Justice Austin.

ADMISSION TO THE LEGAL PROFESSION AND APPOINTMENT OF PUBLIC NOTARIES

The Legal Profession Admission Board is a self-funding statutory body established under the *Legal Profession Act 2004*. The Board is responsible for making rules for and approving applications for the admission of lawyers and the appointment of public notaries. Once admitted as a lawyer, a person may apply to the Law Society of NSW or the NSW Bar Association for a practising certificate as either a solicitor or barrister.

The Board comprises the Chief Justice, three other Judges of the Supreme Court, a nominee of the Attorney General and key members of the legal profession. The Board maintains a close working relationship with the Court in other respects, by providing officers to assist in the administration of admission ceremonies, maintaining the Rolls of Lawyers and Public Notaries, and liaising with the Court's Registry about applications made under the Mutual Recognition Acts. In addition, five Judges of the Court provide important policy input by maintaining positions on the Board's committees.

During 2006, the members of the Legal Profession Admission Board were:

The Honourable the Chief Justice
The Honourable Mr Justice Windeyer AM RFD
ED (Presiding Member)
The Honourable Mr Justice Sully (Deputy
Presiding Member)
The Honourable Mr Justice Studdert
Professor J McKeough (from 4 March)
Mr P Taylor SC
Mr J Gormly SC
Mr C Cawley
Ms J McPhie
Professor C Sappideen
Mr J Feneley

Executive Officer and Secretary:

Mr R Wescombe (to 28 September),
Ms R Szabo (from 29 September)

The Board's work during 2006

- In June, the Board approved specifications for a new computerised student records system. The design will include the implementation of administrative and business rules to automate key LPAB activities and provide comprehensive audit facilities, reporting and statistical analysis tools. The implementation will reduce processing and ongoing costs, and provide more timely and accurate management of information and the ability to develop new reports as and when required.
- The Board assisted the Law Admissions Consultative Committee to progress the development of Uniform Principles for Admission of Qualified Overseas Practitioners.
- One new university degree was accredited by the Board under the Admission Rules, the Juris Doctor degree at the University of Notre Dame, Sydney.
- The Board's Executive Officer, Mr Roger Wescombe retired after 12 years of service and Ms Robin Szabo was appointed to the position.

TABLE 6.1:
SUMMARY AND COMPARISON OF THE LEGAL PROFESSION ADMISSION BOARD'S WORKLOAD

	2004	2005	2006
Lawyer admissions approved by the Board		381	2,019
Legal Practitioner admissions approved by the Board		1,965	1,585
Certificates of Current Admission produced by the Board	534	585	430
Public Notaries appointed by the Board	51	50	53
Students-at-Law registrations	920	733	640

Legal Qualifications Committee

The Legal Qualifications Committee is constituted under the Legal Profession Admission Rules to superintend the qualification of candidates for admission and to advise the Board in relation to the accreditation of academic and practical training courses in New South Wales. The Committee performs its work largely through its sub-committees and reviews decisions of these sub-committees at the request of unsuccessful applicants.

During 2006 the members of the Legal Qualifications Committee were:

The Honourable Justice White (Chairperson)

The Honourable Justice Kirby

The Honourable Justice Palmer (to 30 June)

The Honourable Justice Campbell (from 1 July)

Mr J Fernon SC

Ms J Oakley

Mr D Toomey (to 30 June)

Mr P Doyle Gray (from 1 July)

Mr J Dobson

Mr H Macken

Mr C Cawley

Mr R Harris

Associate Professor A Lamb

Associate Professor K Maxwell (to 30 June)

Mr G Ross (from 1 August)

Mr M Fitzgerald (to 7 April)

Dr K F Sin (from 7 April)

Dr G Elkington (from 24 June)

Executive Officer and Secretary:

Mr R Wescombe (to 28 September);

Ms R Szabo (from 29 September)

Work during 2006

The Legal Qualifications Committee continued to assess an increased number of academic and practical training exemption applications

The Committee assisted the Law Admissions Consultative Committee, through the Board to progress the development of Uniform Principles for Admission of Qualified Overseas Practitioners.

TABLE 6.2:
**APPLICATIONS CONSIDERED BY THE LEGAL
 QUALIFICATIONS COMMITTEE**

	2004	2005	2006
Applications for Academic Exemptions	424	411	452
Applications for Practical Training Exemptions	212	176	193

Examinations Committee

The Examinations Committee is constituted by the Legal Profession Admission Rules to oversee the content and conduct of the Board's examinations and the candidatures of Students-at-Law. It has three sub-committees. The Performance Review Sub-Committee determines applications from students seeking to avoid or overcome exclusion from the Board's examinations. The Curriculum Sub-Committee, in consultation with the Board's examiners and revising examiners, plans the curriculum for the Board's examinations, and the Quality Sub-Committee oversees the quality of examinations and marking.

During 2006, the members of the Examinations Committee were:

The Honourable Justice Simpson (Chairperson)
 The Honourable Justice Campbell (to 30 June)
 The Honourable Justice Hall (from 1 July)
 (Deputy Chairperson)
 Mr M Christie
 Mr J Dobson
 Mr F Astill
 Associate Professor G Monahan
 Mr R Anderson

Executive Officer and Secretary:

Mr R Wescombe (to 28 September);
 Ms R Szabo (from 29 September)

Work during 2006

During 2006 the Committee made further advances in assuring the quality of the Board's

TABLE 6.3:
**THREE-YEAR COMPARISON OF THE EXAMINATION
 COMMITTEE'S WORKLOAD**

	2004	2005	2006
Examination subject enrolments by Students-at-Law	5,693	5,368	5159
Approved applications to sit examinations in non-scheduled venues	39	51	43
Approved applications for special examination conditions	13	17	25
Student-at-law course applications	322	296	299
Applications from students-at-law liable for exclusion from the Board's examinations	400	396	400

Examinations.

- The Committee finalised the adoption of syllabi for all of its 25 subjects which are published on the Board's website.

ADMISSION UNDER THE MUTUAL RECOGNITION ACTS

The management of applications from legal practitioners for admission under the Mutual Recognition Acts forms another aspect of the Registry's work. The Registry liaises with the Legal Profession Admission Board in performing this small task. In 2006, 18 interstate and 53 New Zealand practitioners were enrolled under Mutual Recognition Acts, compared with 198 and 92 in 2005 and 253 and 51 in 2004. The number of practitioners enrolled under Mutual Recognition Acts has dropped significantly as each State and Territory enacts the legislation which allows interstate practitioners to practise seamlessly throughout Australia.

ADMINISTRATION OF THE COSTS ASSESSMENT SCHEME

The Costs Assessment Scheme commenced on 1 July 1994. It is the process by which clients and practitioners determine the amount of costs to be paid in two principal areas: between practitioners and their clients and party/party costs. Party/party costs are costs to be paid when an order is made from a Court (or Tribunal) for unspecified costs. The Costs Assessment section of the Registry undertakes the day-to-day administration of the Costs Assessment Scheme.

The Costs Assessment Scheme is the exclusive method of assessment of legal costs for most jurisdictions. A costs assessment application enables an assessor to determine costs disputes between practitioners and clients, between practitioners and practitioners or between parties to legal proceedings. Applications under the Scheme are determined by external assessors appointed by the Chief Justice. All assessors are members of the legal profession and educational seminars are arranged for them each year by the Costs Assessment Rules Committee. Mr Gordon Salier, solicitor, was the Chair of the Costs Assessment Rules Committee during 2006.

In conjunction with the Costs Assessment Rules Committee, a Costs Assessment Users' Group meets on a quarterly basis to discuss issues in costs assessment from a user's perspective. The Costs Assessment Users' Group is chaired by Justice Brereton and consists of costs assessors, costs consultants and a representative of the Office of the Legal Services Commissioner.

From 1 January 2006 to 31 December 2006 there were 1,968 applications lodged. Of these, 1,357 (69 per cent) related to costs between parties; 224 (11 per cent) were brought by clients against practitioners, and 387 (20 per cent) were brought by practitioners. The review process, which is relatively informal in nature, is carried out by two senior assessors of appropriate experience and expertise and is conducted along similar lines to that used in the original assessment process. The review panel can vary the original assessment and is required to provide a short statement of its reasons. During 2006, there were 221 applications filed for review of costs assessments.

There is still provision to appeal the review panel's decision to the Court, as of right on questions of law and otherwise by leave. These appeals are heard by Associate Judges in the Common Law Division and form part of the Division's civil caseload. A small number of appeals in relation to costs assessment are lodged each year.

PRO BONO SCHEME

The Pro Bono Scheme under Part 66A of the *Supreme Court Rules 1970* was established in 2001 with support from the NSW Bar Association and the Law Society of NSW. The scheme enables unrepresented litigants, who have been considered by the Court to be deserving of assistance, to be referred to a barrister and/or solicitor. Sixteen referrals were made during the year: seven referrals were made in Common Law matters and nine were made in the Equity Division. The Scheme's success depends upon the continued goodwill of barristers and solicitors, and the Court gratefully acknowledges those who give of their time so freely in supporting the Scheme.

JUDICIAL ASSISTANCE PROGRAM

A Judicial Assistance Program was launched to help New South Wales judicial officers meet the demands of their work whilst maintaining good health and well-being. The scheme provides for 24-hour access to a professional, confidential counselling service and free annual health assessments. The Court administers this Program on behalf of all the jurisdictions.

APPENDIX (i): NOTABLE JUDGMENTS - SUMMARIES OF DECISIONS

The Court's full text judgments are accessible online at: <http://www.lawlink.nsw.gov.au/caselaw>

1) **AMACA Pty Ltd v Bernard George Frost**

This appeal was from a decision of the Dust Diseases Tribunal of NSW. The respondent, Mr Frost, was exposed to asbestos fibres in New Zealand and contracted respiratory diseases. The source of the asbestos fibres were products manufactured in New South Wales by the Appellant, then known as James Hardie & Co Pty Ltd.

A key issue was whether the place of the tort was NSW or New Zealand. This was significant because the common law damages available in NSW were considerable higher than those available under the statutory scheme in New Zealand. The trial judge found that the place of the tort was New South Wales, where the products had been manufactured. The Court of Appeal reversed this finding. The Chief Justice, who delivered the judgment of the Court, stated that the tests for determining the place of a tort are concerned with identifying the substance of the cause of action. The Court concluded that given the product was distributed in New Zealand, the person to whom the duty was owed was in New Zealand and the element of causation occurred in New Zealand, the cause of action in this case arose there, rather than the place of manufacture.

A second issue was whether Mr Frost was able to bring proceedings in NSW given that he was prevented from doing so in New Zealand. The Court determined that Mr Frost was prevented from doing so by Australian choice of law rules, which emphasise the need to achieve similar outcomes across legal forums. It also found that the New Zealand statute prevented proceedings for New Zealand torts being pursued outside New Zealand.

Bench: Spigelman CJ, Santow & McColl JJA

Citation: *AMACA Pty Ltd v Bernard George Frost* [2006] NSWCA73

Judgment date: 4 July 2006

2) **Attorney-General of NSW v 2UE Pty Ltd & Anor**

This appeal was from a decision of the Appeal Panel of the NSW Administrative Decisions Tribunal (ADTAP). The Court considered whether the ADT has jurisdiction to hear or determine a question arising under the Commonwealth Constitution.

The case originated with a complaint of homosexual vilification by a Mr Burns against 2UE and presenters John Laws and Steve Price, for comments which Mr Burns contended had vilified a gap couple who appeared on the television programme, *The Block*. The ADT upheld the complaint under s 49ZT of the *Anti-Discrimination Act 1977 (NSW)* and ordered that an apology be broadcast.

The radio station and presenters appealed to the Appeal Panel of the ADT and argued that s49ZT was invalid because it contravened the Constitutional immunity for political speech. The NSW Attorney-General intervened, arguing that the Appeal Panel did not have the jurisdiction to hear or determine a question arising under the Commonwealth Constitution or involving its interpretation. The Appeal Panel rejected the Attorney's arguments, finding that the ADT did have the power to consider any question of law relating to its jurisdiction. The Attorney applied to the NSW Court of Appeal for orders determining the jurisdictional issue.

The Court held that the ADT is able to consider any Constitutional arguments that are raised, in this case the Constitutional immunity for political communication, and to interpret the relevant section so as to conform with the Commonwealth Constitution. The ADT cannot, however, definitively determine a Constitutional question.

The Court further held that covering clause 5 of the Constitution is not a source of Federal jurisdiction for non-judicial bodies. The restriction on a Tribunal exercising Federal jurisdiction arises from Chapter III of the Constitution. Because of the scheme that automatically registers ADT decisions, thereby giving them judicial force, the

1. To determine the place of a tort, the substance of the cause of action must be identified

Tribunal's actions are converted into an impermissible exercise of Federal jurisdiction. A State Parliament cannot invest a tribunal with Federal jurisdiction.

Bench: Spigelman CJ, Hodgson & Ipp JJA

Citation: Attorney-General of NSW v 2UE Sydney Pty Ltd & Anor [2006] NSWCA 349

Judgment date: 11 December 2006

3) Big Top Hereford Pty Limited v Gavin Frederick Crichton Thomas

This judgment concerns the nature of agistment and the rights of parties to a herd in which cattle of different ownership had become mixed. Mr Tyler owned two adjoining properties, known as "Big Top" and "Home Farm", on which he had bred Hereford cattle on rare English bloodlines for many years. He became a bankrupt, and Mr Thomas, the defendant, was appointed his trustee. Once bankrupt, Mr Tyler's properties and his cattle vested in Mr Thomas as trustee. The cattle were subject to a stock mortgage, and between May and August 2003, the mortgagee mustered and sold most of the cattle on the properties. But some cattle, which Mr Tyler claimed belonged to third parties, was left on the Home Farm property.

In November 2003, the plaintiff Big Top Hereford Pty Limited ("BTH") bought 64 cattle at auction from a third party who had previously maintained cattle on the Big Top property. BTH arranged to agist its new herd on Big Top as well, where Mr Tyler acted as their caretaker. This arrangement continued until June 2006, when a transfer of the properties by Mr Tyler to his brother was set aside and Mr Thomas became the registered proprietor of both properties. Mr Thomas then proceeded to muster and remove all the cattle from the properties, with a view to selling them. BTH sought orders restraining Mr Thomas from selling or further dealing with the cattle and compelling him to return the herd.

Justice Brereton considered which party had a superior claim to the cattle Mr Thomas was yet to sell. As this depended on who had the superior right to possession of the cattle, it was necessary to determine who was entitled to possession of the agisted cattle, and whether the agisted cattle

and natural growth accounted for all the cattle mustered by Mr Thomas.

His Honour held that an agreement for the agistment of livestock could take different legal forms – bailment, licence or lease. In this case it was a licence, and BTH retained an immediate right to possession of the agisted cattle. His Honour held that a person who obtains possession of land upon which another's stock is agisted under a licence does not thereby obtain lawful possession of that stock. Accordingly, BTH had a superior claim to the agisted stock and was entitled to their offspring.

However, Mr Thomas mustered 300 cattle in 2006, many more than the 64 originally agisted. Mr Thomas conceded that a small portion of the herd might be BTH's property, but contended that most of the herd comprised cattle that escaped the stock mortgagee's 2003 musters and their offspring.

To determine whether any of the cattle mustered by Mr Thomas were cattle that had been missed in the earlier musters by the stock mortgagee (as opposed to being agisted cattle vested in the trustee), Justice Brereton analysed financial statements and records of musters between 2003 and 2006. His Honour concluded that the Trustee was entitled to the cattle that had escaped the 2003 musters and their descendants – approximately 40% of the herd. The remaining 60% were agisted cattle and their offspring and belonged to BTH. However, it was no longer possible to identify and isolate the cattle to which the trustee was entitled, and those of which BTH was the proprietor or bailee.

In cases where goods are so intermixed that they become indistinguishable, the mixture belongs to the proprietors in proportion to their respective contributions. The degree of culpability for the intermixing may also be a factor. Justice Brereton ruled that BTH was entitled to 60% of the herd or the proceeds of its sale, and the trustee to 40%.

Bench: Brereton J

Citation: Big Top Hereford Pty Ltd v Gavin Thomas as Trustee of the Bankrupt Estate of Douglas Keith Tyler [2006] NSWSC 1159

Judgment date: 6 November 2006

4) Binks v North Sydney Council & Anor*

This judgment explored whether North Sydney Council (“the Council”) was liable for an automobile accident at a road works site. Mr Binks, the driver of the vehicle, contended that the Council’s negligent management of the road works caused his accident. Specifically, he claimed the Council failed to comply with the Australian Standard regulating signposting and delineation of road works at an intersection. The inadequate signage led him to incorrectly conclude a southbound lane was closed to traffic. In his confusion, Mr Binks mounted the kerb and collided with a telegraph pole.

Justice Hoeben made factual findings before considering the issue of liability. His Honour considered police photographs of the accident site depicting the configuration of the road works and signage. The Court heard expert opinion about whether the warning signs provided motorists with sufficient time to react and adjust to the changed traffic conditions. Several local road users testified about the nature of the roadwork and its tendency to confuse and mislead motorists. His Honour found that the signage deviated from the governing Standard in several ways. First, the warning sign denoting changed traffic conditions was positioned too close to the road works. In addition, the sign directing drivers to “keep left” was too small and indistinctively coloured to be easily seen at night when Mr Binks had his accident.

Justice Hoeben also found that the Council breached its duty of care to the plaintiff. Although the plaintiff had exceeded the speed limit and was driving under the influence of alcohol, the Council’s duty of care was not limited to “careful road users”. His Honour referred to the High Court’s finding in *March v Stramare* (1990-1991) 171 CLR 506 that a duty of care extended to all foreseeable road users, including those whose faculties were impaired by alcohol. However, Justice Hoeben acknowledged that the plaintiff’s conduct contributed more significantly to the accident than the Council’s negligence. The plaintiff’s contributory negligence was assessed at 65%.

Assessment of the plaintiff’s general damages rested on determination of the physical injuries he sustained in the accident. In addition to general damages, the plaintiff claimed past economic loss, future loss of earning capacity, past domestic assistance, future assistance and financial management costs. Justice Hoeben found that the plaintiff’s acquired brain injury affected his memory and organisational skills. His Honour also found that the sensory loss and impairment of the plaintiff’s right hand prevented him from regaining the guitar skills necessary for his chosen career in rock music. After deducting 65% for the plaintiff’s contributory negligence, the plaintiff was awarded \$330,253.00 in damages.

Bench: Hoeben J

Citation: Binks v North Sydney Council & Anor [2006] NSWSC 463

Judgment date: 25 May 2006

**An appeal against this decision is currently before the Court of Appeal.*

5) Director of Public Prosecutions v Sami El Mawas

This case raises a question of general importance about the proper construction of section 32 of the *Mental Health (Criminal Procedure) Act 1990 (the Act)*. Section 32 (1) enables a Magistrate to deal with persons charged with an offence, but suffering certain mental conditions, to be assessed otherwise than in accordance with law and includes a provision to provide treatment rather than a custodial sentence. The appellant, Sami El Mawas, had sustained a head injury some six years’ prior to the proceedings. The injury had resulted in impaired emotional control, disinhibition and impulsivity.

In February 2004, Mr El Mawas and two accomplices broke into a neighbour’s premises and maliciously wounded two men. Mr El Mawas appeared before the Local Court charged with two counts each of malicious wounding and assault occasioning actual bodily harm; entering a building/land with intent to commit an indictable offence; maliciously destroy or damage property; and enter enclosed lands without lawful excuse.

5. Explores the proper construction of section 32 of the Mental Health (Criminal Procedure) Act 1990

6. Landmark judgment concerning the proper interpretation of exempt material under the Freedom of Information Act 1989

In the Local Court, the respondent's solicitor asked that Mr El Mawas be dealt with under section 32 of the Act. Mr El Mawas' psychologist reported to the Court that an inability to plan was a feature of his condition. The Magistrate found that section 32 was not relevant to the proceedings because, although the respondent was indisputably suffering from a mental condition that interfered with his impulse control, the charges against him were in relation to acts committed with planning and forethought, with no indication they were acts of passion or impulse. Her Honour refused the s 32 application.

On appeal in the Supreme Court, the sole question before the primary judge was whether the Magistrate had erred on "a question of law alone". The primary judge held that the Magistrate's ruling erred in five particulars in regard to construction of s 32 of the Act. These included: failure to have regard to El Mawas' mental condition; proceeding by way of the usual criminal procedure instead of ordering treatment, and finding that the offences were not related to, or caused by, El Mawas' mental condition. The primary judge allowed the appeal and remitted the matter to Local Court for determination corresponding to his reasons.

In the Court of Appeal, the Department of Public Prosecutions submitted that the primary judge erred in finding appealable error in the Magistrate's decision. The Court of Appeal found that the Magistrate accurately set out the importance of the psychologist's report and the Magistrate was entitled to conclude that the alleged offence involved premeditation and planning. The appeal was allowed. The Court of Appeal set aside the Supreme Court's decision and remitted the proceedings to the Local Court.

Bench: Spigelman CJ; Handley JA; McColl JA

Citation: Director of Public Prosecutions v Sami El Mawas [2006] NSWCA 154; 66 NSWLR 93

Judgment date: 19 June 2006

6) General Manager, WorkCover Authority of NSW v Law Society of NSW

This was an appeal on a point of law against a decision of the Administrative Decisions Tribunal Appeal Panel ("the Panel"). The dispute began in 2003 after WorkCover refused the Law Society's application to access documents under section 16 of the *Freedom of Information Act 1989* ("the Act"). The documents in question were created by a solicitor engaged by WorkCover to review the legislative scheme governing legal costs in workers compensation matters.

In refusing the application, WorkCover relied upon exemption provisions contained in Schedule 1 of the Act. Specifically, WorkCover determined that the documents were exempt from production because: they were subject to legal professional privilege; they were internal working documents whose disclosure would be contrary to the public interest; they were subject to a secrecy provision and contained confidential material.

The Law Society unsuccessfully applied to overturn WorkCover's determination through an internal review process, and on appeal to the Administrative Decisions Tribunal. However, the Law Society's challenge before the Panel succeeded. The Panel found WorkCover failed to prove the documents were exempt on any of the grounds specified, and granted the Law Society access to the documents sought. In the Court of Appeal, WorkCover submitted that the Panel erred in its interpretation of what constitutes exempt material under Schedule 1 of the Act.

Regarding WorkCover's legal professional privilege claim, the Court upheld the Panel's decision. The Court found this exemption only applies when a legal practitioner creates a communication with the dominant purpose of providing legal advice to a client. The exemption does not extend to advice on operational, administrative or policy issues of the type WorkCover asked the solicitor to prepare.

In relation to the internal working documents exemption, the Court held that the Act operates on the premise that there is a public interest in the public having access to government information to facilitate the public's ability to discuss, review and criticize government action, subject to such

restrictions as are reasonably necessary for the proper administration of the government. Consistent with that premise, it concluded that testing whether disclosure of documents would be contrary to the public interest required the decision-maker to weigh the public interest in citizens being informed of the processes of their Government and its agencies on the one hand against the public interest in the proper working of Government and its agencies on the other. The Court rejected WorkCover's submission that releasing the solicitor's report would compromise final resolution of its legal costs review. The Court upheld the Panel's finding that the review was essentially complete and that that disclosure of these documents would not result in any tangible harm that could be conceived as contrary to the public interest. The Court also dismissed WorkCover's remaining exemption claims on the basis of secrecy and confidentiality.

The Court of Appeal held that the Panel made no error at law in rejecting WorkCover's claims for exemption.

Bench: Handley JA; Hodgson JA; McColl JA

Citation: General Manager, WorkCover Authority of NSW v Law Society of NSW [2006] NSWCA 84; (2006) 65 NSWLR 502

Judgment date: 24 April 2006

7) Gianoutsos v Glykis

This matter came before the Court of Criminal Appeal by way of a stated case under section 5B of the *Criminal Appeal Act 1912*. Mr Gianoutsos, the appellant, had initially obtained an interim Apprehended Personal Violence Order (APVO) in the Local Court against Ms Glykis, the respondent. The Local Court found that Ms Glykis harassed Mr Gianoutsos and his wife with distressing emails and phone calls. A District Court judge overturned this decision on the basis that the emails neither constituted harassment under section 562A1 of the *Crimes Act*, nor was he satisfied that Ms Glykis sent the emails or made the phone calls. When forming this decision, the District Court judge considered some new evidence that had not been available at the Local Court hearing.

The Court of Criminal Appeal was asked to consider six questions in this stated case. The first was whether the appeal to the District Court was a hearing de novo (a new trial). The Court found it was not a new trial, but a re-hearing on the transcript from the Local Court proceedings, and that fresh evidence could only be given with the leave of the court. The second question was whether the District Court judge erred in law by treating it as a new trial. Although it found the District Court judge erred, the Court noted this was immaterial. The third question concerned which party bore the onus of proof in the District Court appeal. The Court ruled that in this case, as the appeal was by re-hearing, Mr Gianoutsos (the respondent in the District Court appeal) continued to carry the burden of proving his case.

The fourth question sought to establish if the District Court judge erred by stating the facts must be proved to the "comfortable satisfaction" of the court. The Court examined section 562A I (1) of the *Crimes Act*. The section states the court must satisfy itself, on the balance of probabilities, that the person seeking the APVO is genuinely afraid of, or has reasonable grounds to fear, the person whose conduct amounts to harassment, molestation or intimidation. The District Court judge accepted Mr Gianoutsos had reasonable grounds to fear the author of the emails, but was not "comfortably satisfied" Ms Glykis wrote the emails. The Court held that this second consideration was unnecessary and irrelevant to the making of an APVO. The Court observed that, if based on the available evidence the trial judge was satisfied Mr Gianoutsos had reasonable grounds for his fears, he was obliged to make an APVO order against Ms Glykis.

The Court concluded the District Court judge also erred in finding it necessary to satisfy himself that Ms Glykis actually engaged in intimidating conduct. Section 562A I (1) requires the court to establish that the complainant had reasonable grounds to fear the other party, not determine that the other party had engaged in intimidating conduct.

The final question involved the adequacy of the District Court judge's reasons in dismissing the APVO. The District Court judge dismissed the APVO after he concluded Ms Glykis was not the

7. *Requisite considerations in applications to the District Court's appellate jurisdiction for Apprehended Personal Violence Orders*

8. Discusses loss of chance and the use of concurrent evidence in medical negligence cases

author of the emails, yet his basis for this conclusion was unclear. Justice McClellan found that the trial judge's reasons were insufficient.

The Court of Criminal Appeal ordered that the matter be remitted to the District Court and determined in accordance with the above six answers.

Bench: McClellan CJ at CL; Sully J; Hislop J

Citation: *Gianoutsos v Glykis* [2006] NSWCCA 137; 162 A Crim R 64; (2006) 65 NSWLR 539

Judgment date: 1 May 2006

8) **Kenneth Halverson and Ors v Dobler; Kurt Halverson by his tutor v Dobler**

The plaintiffs claimed that the defendant, a general practitioner, failed to exercise his duty of care when treating Kurt Halverson. It was alleged the defendant's failure to identify a cardiac problem and refer Kurt to a cardiologist resulted in cardiac arrest. Kurt's parents and sister also sued for nervous shock as they were present in the family home when the cardiac arrest occurred. The parties agreed to the amount of damages, leaving the court to determine whether a breach of care had arisen.

The relationship between the plaintiffs and the defendant commenced in 1995 when Kurt was taken to Cessnock Hospital after he collapsed in the family home. Treatment by the defendant continued in both hospitals and medical centres until 2001. Despite diagnosing a heart murmur and glandular fever in early February 2001, the defendant released Kurt from hospital. That same night, Kurt suffered a cardiac arrest resulting in brain damage and loss of use of limbs.

Expert evidence from five general practitioners and four cardiologists was heard concurrently. There was some disagreement between the practitioners as to the cause of Kurt's symptoms and whether an electrocardiogram (ECG) would have aided proper diagnosis. Justice McClellan determined an electrocardiogram should have been performed once the defendant identified the heart murmur. It was likely the ECG would have revealed an abnormality as Kurt was suffering from a viral condition that could have hastened the onset of his cardiac arrest. Further, if any abnormality were present then, on the balance of

probabilities, the defendant would have diagnosed it.

The Court confirmed that section 5O of the *Civil Liability Act 2002 (NSW)* is a defence to claims of liability in negligence, but not to the negligence itself. The defendant in this instance could not utilise the defence as, in failing to obtain an ECG, he went against what was considered as being competent professional practice. In relation to whether the defendant was negligent, the test in this case was not whether the defendant's conduct corresponded with medical procedure, but whether the conduct meets the legal standard of care.

The plaintiffs argued that if the Court did not find that the defendant's breach of duty of care led to Kurt's injuries, then the plaintiffs would be entitled to damages for loss of chance of a better outcome.

The Court considered both arguments. In situations where the defendant's actions have 'materially contributed' to the injuries on the balance of probabilities, then causation is satisfied. However, where the defendant's actions are found to be less than 50% responsible, the only way the plaintiff can succeed is by arguing loss of chance of a better outcome. Justice McClellan held there was a 65% chance that the ECG would have revealed a cardiac condition that could have been treated to prevent the cardiac arrest. Therefore, the defendant had materially contributed to Kurt's injuries and the loss of chance argument did not apply.

Bench: McClellan CJ at Common Law

Citation: *Halverson and Ors v Dobler; Halverson by his tutor v Dobler* [2006] NSWSC 1307

Judgment date: 1 December 2006

9) **Johansen v Art Gallery of NSW Trust & Anor**

This dispute concerned the winning 2004 Archibald Prize portrait by Craig Ruddy. The plaintiff, Tony Don Johansen, was an unsuccessful entrant for the 2004 Archibald Prize. Mr Johansen sought a declaration from the Court that the defendant's decision to award the prize to Mr Ruddy was invalid, as it was not "painted" by its creator. Instead, the plaintiff contended that the

work was a “drawing” largely comprised of pencil, charcoal and other non-paint art materials.

Mr Justice Hamilton emphasised that the Court was in no way concerned with the artistic merits of the portrait. The sole issue for the Court was whether the award breached the terms of the charitable trust (the Art Gallery of NSW Trust) responsible for awarding the prize.

The artist, Mr Ruddy, gave extensive evidence detailing the materials he used to create the portrait, including charcoal, various types of pencil, acrylic paint, water, varnish and other materials. It was noted that various definitions of “painting” and “drawing” overlap and that their exact boundaries are uncertain.

Mr Justice Hamilton referred to the case of the Archibald Prize-winning portrait of Joshua Smith by William Dobell. This 1944 case contended that the winning entry was a caricature and not a portrait. Justice Roper decided in favour of Mr Dobell and cited Godefroi (5th ed p 244) – ‘A personal trust or discretion involving a matter of opinion or judgement will not be interfered with, unless a fraudulent or mischievous exercise of it takes place or is contemplated.’

His Honour concluded that “it cannot be said that the trustee’s exercise of judgement or opinion was wrong” and therefore the Court was not required to interfere with the trustee’s determination. The Court therefore need not and should not proceed to express a view on whether the portrait was “painted”, since there is a certain appearance of strangeness in courts making determinations concerning the qualities of works of art. The plaintiff’s claim failed and was dismissed.

Bench: Hamilton J

Citation: Johansen v Art Gallery of NSW Trust [2006] NSWSC 577

Judgment date: 14 June 2006

10) Kirk Group Holdings Pty Ltd & Anor v Workcover Authority of NSW & Anor

This judgment is a ruling by a jointly constituted Court of Appeal and Court of Criminal Appeal on a decision by the Industrial Relations Commission (IRC). The case arose out of a workplace accident, in which the manager of a farm was killed after a vehicle he was driving overturned on a steep slope. The IRC fined the company and its directors after finding that they had failed to ensure the health, safety and welfare of the manager of the farm they owned.

The issues related to the Courts’ powers to deal with the case, which had not been appealed to the Full Bench of the Commission.

The Court found that there was no right of appeal from the IRC to the Court of Criminal Appeal under section 5(1) *Criminal Appeal Act 1912*, which provides for appeals from convictions on indictment. The Court held that it was not necessary to determine the constitutional validity of section 179 *Industrial Relations Act 1996 (NSW)*, which provided that a decision of the IRC was final and could not be appealed against except in the Full Bench of the Commission. The Court further held that s 179 could not be avoided for criminal convictions by appealing to the Court of Appeal.

The Court found that whilst the Supreme Court may retain its jurisdiction to order an inquiry under Pt 13A of the *Crimes Act 1900* with respect to convictions under the *Occupational Health and Safety Act 1983 (OHS)*, it was not appropriate to exercise that jurisdiction where a general body of jurisprudence was challenged or where there was a statutory right of appeal to the Full Bench of the Commission. Finally, the Court held that it does retain a supervisory jurisdiction over decisions of the IRC, but that it should not be exercised where, as here, there was a right to appeal to the Full Bench that had not been exercised.

Bench: Spigelman CJ, Beazley & Basten JJA

Citation: Kirk Group Holdings Pty Ltd & Anor v Workcover Authority of NSW & Anor [2006] NSWCA 172; 66 NSWLR 151; 154 IR 310

Judgment date: 30 June 2006

10. Discusses the operation of s179 of the Industrial Relations Act and the Court of Appeal’s supervisory jurisdiction over the IRC

11. The value of community land must be objectively determined under the Land Acquisition Act, not according to the "value to owner" principle

11) **Leichhardt Council v Roads & Traffic Authority of NSW**

This was an appeal on a question of law, namely the interpretation of sections 54, 55 and 56 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, from the Land and Environment Court. The case arose from an attempt by the RTA to compulsorily acquire land owned by the Council in order to construct the City West Link Road. The land was classified as "community land" and could not be sold under the *Local Government Act 1993 (NSW)*. As a result of these restrictions, the judge found that the value of the compensation payable to the Council should be reduced by 80%.

The issue before the Court of Appeal, constituted as a five judge bench, was whether the restrictions on the sale of land affected the monetary value of the land for the purposes of valuing it for compulsory acquisition. This involved consideration of the established authority, *Corrie v MacDermott*, which is the basis for valuations considering the value to the owner.

The Chief Justice, delivering the judgment for the Court, held that the market value should be determined under the *Land Acquisition Act* on an objective test, not by reference to restrictions which are personal to the owner. Because the classification here only applied to the Council as owner because it was governed by the *Local Government Act*, it should not be taken into account to determine the value of the land. Justice Bryson further noted that the purpose of the restriction on sale of community land does not include making it cheaper for resuming authorities to acquire community land than other land.

Bench: Spigelman CJ, Beazley, Bryson and Basten JJA and Campbell AJA

Citation: *Leichhardt Council v Roads & Traffic Authority of NSW* [2006] NSWCA 353; 149 LGERA 439

Judgment date: 11 December 2006

12) **Obeid v John Fairfax**

In the second half of 2002, *The Sydney Morning Herald* published a series of articles about the Canterbury Bulldogs Leagues Club. The articles covered breaches of the salary cap and the Club's multi-million dollar Oasis housing project in western Sydney.

A front-page article on August 30 made certain allegations about the then NSW Labor Minister for Mineral Resources and Fisheries, Edward Obeid, and the Oasis development. Mr Obeid sued for defamation and a jury subsequently found that the article carried four defamatory imputations.

As the defendant, *The Sydney Morning Herald* relied on s22 of the *Defamation Act* and a defence of common law qualified privilege based on *Lange v Australian Broadcasting Corporation* (1997) referred to in the judgment as the Lange defence. Lange extended the defence of common law qualified privilege to publications concerning government and political affairs, so long as the publisher acted reasonably in publishing it.

The plaintiff agreed that readers of the article had an interest in receiving the information it contained, that the matter related to political and/or government matters and that the imputations related to matters of public interest.

The whole case therefore rested on the issue of reasonableness. The defence argued that cases involving political comment should be treated differently to other defamation cases, particularly on the question of 'reasonableness'. However, Justice Hoeben rejected this position.

His Honour did accept that the defendant's witnesses – specifically the two journalists who wrote the article – did not intend to convey the imputations found by the jury, but it was still necessary to decide whether the defendant's conduct was reasonable in terms of the imputations the jury found **were** conveyed. It was further necessary to determine whether it was reasonable to **foresee** that the article might convey the imputations which the jury found.

Justice Hoeben found that on a reading of the article, 'not only was it reasonable to foresee that the imputations found by the jury might be

conveyed, it was likely'. He therefore found that the defendant had not acted reasonably in publishing the article.

His Honour also found that the journalists had not taken enough care to ensure the reliability of their source. In short, 'not only was the source of the allegations hearsay but it was a remote and unreliable form of hearsay. The dangers inherent in such material would have been known to the journalists but not necessarily obvious to an ordinary reader.'

Mr Obeid was awarded damages of \$162,173 plus costs.

Bench: Hoeben J

Citation: Obeid v John Fairfax Publications Pty Limited [2006] NSWSC 1059

Judgment date: 12 October 2006

13) Perpetual Trustee Company Ltd v Albert and Rose Khoshaba

This was an appeal from a decision of the District Court of NSW. The respondents, Mr and Mrs Khoshaba, had entered into a loan agreement with the appellant, Perpetual Trustee Company Limited. The respondents had borrowed \$120,000 primarily to invest in a pyramid investment scheme operated by Karl Suleman Enterprises (KSE), providing their family home as security. The scheme, which had been promoted extensively within the Assyrian community of which the respondents were members, collapsed leaving the pensioner couple without the expected income from their investment and owing Perpetual Trustees \$87,572.38.

The trial judge found that the loan agreement was unjust under the provisions of the *Contracts Review Act 1980 (NSW)*, on the basis that the lender has failed to follow prudent lending practice, which he saw as encompassed within Perpetual's own guidelines. His Honour granted Mr and Mrs Khoshaba relief from their obligations under the agreement by reducing their debt to Perpetual Trustees to \$29,803.57.

The Court of Appeal upheld Perpetual Trustee's appeal, finding there was error in the trial judge's reliance on the guidelines as constituting prudent lending practice as that was not how the case had been run below. The Court also outlined how an appeal court should undertake a rehearing of a determination as to whether a contract is unjust under the Act.

The Court of Appeal then determined the matter of whether the contract was unjust afresh. The Court discussed the factors that were relevant, and entitled to significant weight, in the determination of unjustness. The Chief Justice found that a Court applying a standard as general as "unjustness" cannot be confined by other cases as if they were rules. The Court found that in these circumstances, the fact that the lender was willing to lend on the value of the security alone, and was indifferent to the purpose of the loan, is entitled to significant weight. This is especially so when the security is a family home of a low income earner and pensioner. The Court found that Perpetual Trustee was not innocent of the cause of unjustness and Mr and Mrs Khoshaba should be granted relief under the loan agreement.

The appeal was dismissed and Perpetual Trustee was order to pay Mr and Mrs Khoshaba's costs.

Bench: Spigelman CJ, Handley & Basten JJA

Citation: Perpetual Trustee Company Ltd v Albert and Rose Khoshaba [2006] NSWCA 41

Judgment date: 20 March 2006

13. Application of contemporary community standards to the notion of "just" in *Contracts Review*

14) **Re S and the Adoption Act 2000 (NSW) (No2)**

This judgment concerned the legal framework governing the adoption of children from the Philippines. In an effort to ensure compliance with every possible order for intercountry adoption, the applicants drew up three separate applications. The first was made pursuant to Chapter 4 of the *NSW Adoption Act 2000*; the second pursuant to Regulation 15 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*, and the third was made by the Director General of the Department of Community Services pursuant to section 107 of the *Adoption Act* for an order of adoption.

Both Australia and the Philippines are signatories to the *Hague Convention on Intercountry Adoption*. The Convention applies when a child residing in one Contracting State will be moved to another after adoption by spouses residing in the “receiving state”. Regulation 15 stipulates that such adoptions are made in accordance with the Convention and the laws of the Commonwealth and the laws of the Convention country. Chapter IV of the *Adoption Act 2000* specifies that persons wishing to adopt a child habitually resident in another Contracting State shall apply to the Central Authority in the state of residence. Justice White considered the provisions of Regulation 15 and the Commonwealth and NSW regulations that apply to adoptions.

His Honour found that Regulation 15 (1)(b) necessitated consideration of the requirements of prospective adoptive parents’ State of residence, so far as they are applicable under the Convention. Justice White identified an inconsistency between the *Hague Convention Regulations* and s107 and Chapter IV of the *New South Wales Adoption Act*. Pursuant to section 109 of the Constitution, the *Hague Convention Regulations* prevail, to the extent of inconsistency. His Honour noted that it would be a ‘quirk’ of legislative drafting of the *Family Law Act* if it impinged upon Australia’s implementation of the Convention. For these reasons, Justice White refused the applications under Chapter 4 of the *Adoption Act*, and by the Director-General under section 107 of the *Adoption Act*.

However, the Court was satisfied that the arrangements for adoption were made in accordance with the laws of New South Wales as they relate to children from a Convention country. The arrangements were also made in accordance with the laws of the Philippines and the judge was satisfied that the Inter-Country Adoption Board for the Philippines gave authority in accordance with Articles 15 and 16 of the Convention. The adoption application was granted under Regulation 15 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations*.

Bench: White J

Citation: Re S and the Adoption Act 2000 (NSW) (No2){2006} NSWSC 1438

Judgment date: 20 December 2006

15) **Regina v Lodhi**

Mr Faheem Lodhi was charged with four terrorism offences under sections 101.4 and 101.6 of the *Criminal Code 1995 (Commonwealth)*. A jury found Mr Lodhi guilty of three charges: collecting maps of the electricity system to prepare for a terrorist act; seeking information about the availability of materials used to manufacture explosives or incendiary devices, and possessing a document detailing the manufacture of poisons, explosives, detonators and incendiary devices in preparation for a terrorist act.

In sentencing Mr Lodhi, Justice Whealy made findings of fact consistent with the jury’s verdicts. His Honour was satisfied that Mr Lodhi secured maps from energy suppliers to use in planning to bomb part of the Australian Electricity Supply System. Whilst acknowledging that Mr Lodhi could not solely rely upon the maps to comprehensively plan an attack, they represented a ‘starting point’ for terrorist activities. Other material in Mr Lodhi’s possession, including a CD-Rom encouraging violent jihad and acts of martyrdom, supported this finding and reflected the ideas foremost on his mind when sourcing the maps.

Regarding the second offence, his Honour accepted that Mr Lodhi obtained the price list of chemicals to prepare to assemble a homemade urea nitrate bomb, rejecting the claim it was acquired for legitimate business purposes. Finally, his Honour considered the 15-page document that was the subject of the third charge. Most relevantly, the document contained the formula for manufacturing a urea nitrate bomb, written in Mr Lodhi's own hand. Although his Honour was not certain Mr Lodhi intended to target innocent people, there was sufficient evidence to indicate he knew that using this device to damage property or infrastructure would almost certainly harm people in the explosion's vicinity.

Justice Whealy considered the maximum penalty for each charge and Part 1B of the *Crimes Act 1914 (Commonwealth)* ("the Act"), which concerns the sentencing of federal offenders. Justice Whealy also considered the need to deter terrorist crimes through substantial sentences and the Court's obligation under section 19AG of the Act to fix a single non-parole period of at least $\frac{3}{4}$ of the sentence imposed.

In relation to the second charge, which carries a maximum penalty of life imprisonment, Justice Whealy sentenced Mr Lodhi to 20 years imprisonment with a single 15 year non-parole period. This sentence reflected the serious nature of the offence and the fact Mr Lodhi intentionally performed an act in preparation for a terrorist act. Indictment counts one and three resulted in a sentence of ten years imprisonment each, to be served concurrently with the sentence for the second charge.

Bench: Whealy J

Citation: Regina v Lodhi [2006] NSWSC 691; 199 FLR 364

Judgment date: 23 August 2006

16) Re Regis Towers Real Estate Pty Ltd

Regis Towers Real Estate ("the Company") went into receivership in September 2004. This was an application by the Company's administrator under section 447D of the *Corporations Act 2001*. The administrator sought the Court's direction regarding whether Meriton, the developers of Regis Towers apartment building, were secured in respect of a \$1,255,000 debt.

In April 1999, Meriton Apartments Pty Ltd entered into a Caretaker Manager Agreement with Regis Towers Real Estate Pty Ltd ("the Company"). This agreement obliged the Company to pay \$1.75 million in return for services as caretaker; building manager; buying, selling and leasing agent; and rent collector. Meriton Finance Pty Ltd loaned the Company funds to help meet this obligation. These funds were provided in two tranches: one for \$770,000 in August 1999, the other for \$455,000 in December 1999.

Two documents in Torrens title form were prepared to provide security for the first and second tranches of the loan, although neither document specified the land being mortgaged. Both mortgages were unregistered, however, the charge for the second tranche did refer to caretaker and management rights for units and securities.

Mr Justice Young directed that the administrator would be justified in treating the first mortgage as invalid. For a mortgage to be effective, it must specify the property mortgaged, and this form did not do so.

The administrator contended that the second mortgage was a floating charge and void against the administrator under section 266 of the *Corporations Act*. Mr Justice Young considered the essential elements of a floating charge. His Honour noted that a floating charge is generally characterised by the company's ability to conduct its business in the normal way until some future step is taken by one of those interested in the charge.

17. *Minors are not legally immune from their obligations as trustees of resulting or constructive trusts*

In this case, his Honour found that the second mortgage was a charge over the Company's right to be caretaker, manager and agent for buyers, sellers or lessees. It was clear that entering into the mortgages had no effect on the Company's operations in this regard. His Honour acknowledged that the highest courts in the land had reached different conclusions regarding the elements of a floating charge. Mr Justice Young considered the construction of the particular mortgage documents, coupled with the prevailing test that business operations must remain unaffected by the mortgage, and found that the charge was indeed floating, not fixed.

His Honour directed that the second mortgage be treated as an unregistered floating charge and thus void against the administrator.

Bench: Young CJ in EQ

Citation: *Re Regis Towers Real Estate Pty Ltd* [2006] NSWSC 852; 58 ACSR 523

Judgment date: 23 August 2006

17) **Sanofi-Aventis Australia v Kartono**

This judgment explores whether a minor can be the trustee of a resulting or constructive trust and subject to a Mareva (freezing) order.

The substantive proceedings concerned Sanofi-Aventis Australia's (the plaintiff's) efforts to retrieve company funds from a former employee who allegedly removed \$105,000 from the business. During the course of proceedings, evidence emerged that this sum was paid into the account of a 17-year-old minor, Mr A Lai. The plaintiff contended that the money had remained under Mr Lai's care since that time. The plaintiff filed a motion seeking to join Mr Lai as a defendant and freeze his assets through a Mareva order. The plaintiff argued that the transfer of monies had established Mr Lai as the trustee of a resulting or constructive trust and Mr Lai should meet his obligations in the same manner as any other trustee.

Justice Campbell first established whether Mr Lai could be regarded as the trustee of the monies. His Honour considered the relationship between section 151A of the *Conveyancing Act 1919* and section 10 of the *Minors (Property and Contracts) Act 1970*. Whilst acknowledging these legislative provisions clearly affected an infant's ability to be an express trustee, his Honour found that they did not preclude a minor who has received someone else's property as a volunteer from holding that property on a resulting or constructive trust.

His Honour observed that the operation of a resulting trust is dependent upon the intention of the person bestowing the property (or purchase capital) on another. The fact that the recipient is under 18 does not affect the operation of a resulting trust as only the intention of the person conveying the property to capital is critical. A constructive trust operates by imposing an obligation upon the legal property holder's conscience arising from the circumstances in which that property has come to be held. Justice Campbell concluded that there is no reason why people under 18 should, merely by virtue of that fact, be immune from obligations of conscience, of the type that are recognised as giving rise to constructive trusts.

Justice Campbell granted the plaintiff leave to join Mr Lai as a defendant and made an asset-freezing Mareva order against him.

Bench: Campbell J

Citation: *Sanofi-Aventis Australia v Kartono & Ors* [2006] NSWSC 1284

Judgment date: 27 November 2006

18) Trust Company of Australia Ltd (trading as Stockland Property Management) v Skiwing Pty Ltd (trading as Café Tiffany's)

This appeal was from a decision of the Appeal Panel of the NSW Administrative Decisions Tribunal ("ADT"). The judgment considered whether federal jurisdiction can be vested in the ADT and whether the ADT has the power to determine claims under the *Trade Practices Act*.

The respondent was the proprietor of a café in a Sydney shopping arcade owned by the appellant, Stockland Property Management ("Stockland"). Shortly after a new lease came into effect between the parties, Stockland began to pursue a possible redevelopment of the arcade and issued three relocation notices to Skiwing. As a result of the redevelopment plans, the arcade had many empty shops and the decline in traffic adversely affected Skiwing's business. Skiwing sought damages in the ADT under section 52 of the *Trade Practices Act*. The ADT ruled that it had no jurisdiction under the Act, however, the ADT's Appeal Panel ("the Panel") reversed this decision, finding the Tribunal was a "court of the State". Stockland challenged this finding in the Court of Appeal.

Chief Justice Spigelman considered Commonwealth Parliament's intent when drafting section 86(2) of the *Trade Practices Act*. The Chief Justice determined that the intent was to confer jurisdiction under that Act upon every institution which can be described as a "court of the state" under s77(iii) of the *Constitution*. His Honour found that a court is an institution consisting of judges and that operates within restrictions on the power of delegation. Because the ADT is not predominantly composed of judges, the Chief Justice found that it was not "a court of a State". The Court of Appeal determined that the ADT was correct at first instance to decide that it had no jurisdiction under the *Trade Practices Act* and set aside the decision of the Appeal Panel.

Stockland challenged a further finding of the Panel concerning section 34 of the *Retail Leases Act*. This section provides for compensation to a lessee that has suffered a loss if the lessor does not rectify the matter after being requested to do so in writing. The ADT initially determined it did not have the jurisdiction to hear this claim, however, the Panel disagreed and remitted the matter to the

ADT. The Court of Appeal set the Panel's decision aside, upholding Stockland's appeal.

Bench: Spigelman CJ; Hodgson JA; Bryson JA

Citation: Trust Company of Australia Ltd (trading as Stockland Property Management) v Skiwing Pty Ltd (trading as Café Tiffany's) [2006] NSWCA 185; 66 NSWLR 77

Judgment date: 13 July 2006

17. Breaches of the Trade Practices Act 1974 (Cth) cannot be pleaded before state tribunals, regardless of the tribunal's composition

APPENDIX (ii): COURT STATISTICS – COMPREHENSIVE TABLE OF STATISTICS

- Filings, disposals and pending cases
- Timeliness
 - Court of Appeal, Court of Criminal Appeal, Criminal List - age of pending cases at 31 December
 - Other lists - waiting times
- Use of alternative dispute resolution

Notes

The figures for pending cases will include cases that have been re-opened after judgment, and cases referred between case management lists. For this reason, the pending caseload figures will not always reconcile with associated filing and disposal figures in this table.

“n/a”– figures not available or not separately reported

“-“ – item not applicable

“0” – zero count

FILINGS, DISPOSALS AND PENDING CASES

	2002	2003	2004	2005	2006
COURT OF APPEAL¹					
Filings					
Appeals and applications for relief	446	485	516	442	319
Applications for leave to appeal ²	314	330	287	285	213
Net new cases ³	710	761	760	690	494
Disposals					
Appeals and applications for relief	494	443	497	456	402
Applications for leave to appeal	264	317	273	320	239
Net disposals ⁴	707	703	728	739	603
Pending cases at 31 December					
Appeals and applications for relief	289	331	350	336	253
Applications for leave to appeal	162	175	189	154	128
Total	451	506	539	490	381

¹ These statistics exclude holding notices of appeal and holding summonses for leave to appeal.

² This item also includes applications where parties have elected to have a concurrent hearing of both the application for leave to appeal and the appeal (if leave is granted).

³ Where an appeal has been preceded by an application for leave, this is regarded as one continuous case initiated by the application for leave to appeal.

⁴ Where an appeal has been preceded by an application for leave, this is regarded as one continuous case, and disposal is counted only when the substantive appeal is finalised.

	2002	2003	2004	2005	2006 ²
COURT OF CRIMINAL APPEAL¹					
Filings	516	538	539	524	452
Disposals	998	578	564	536	501
Pending cases at 31 December	284	264	239	229	180

¹ The procedures for filing criminal appeals changed on 1 July 2002 and the operational figures for 2002 are therefore aberrant.

² For the year 2006, appeals from decisions of the NSW State Parole Authority are excluded from the statistics. Parole decision appeals remain included in the statistics for previous years. Typically, less than 10 parole decision appeals have been filed each year. (Note: no parole decision appeals were pending at the end of 2005).

FILINGS, DISPOSALS AND PENDING CASES *CONTINUED*

	2002	2003	2004	2005 ²	2006
COMMON LAW DIVISION - CRIMINAL¹					
Criminal List					
Filings ³	116	127	81	94	104
Disposals ⁴	107	106	105	126	104
Pending cases at 31 December	87	118	99	93	93
Bails List					
Filings	2,315	2,691	2,756	2,715	2,789
Disposals	2,272	2,679	2,753	2,709	2,898
Pending cases at 31 December	209	212	240	344	235

¹ In all years, the figures exclude matters under Part 7 of the Crime (Appeal and Review) Act 2001 and applications for re-determination of life sentence.

² The figures for 2005 and onwards are based on new counting rules and are therefore not directly comparable with figures for earlier years. From 1 January 2005, the Court changed its counting rules as follows to align with national counting rules: the counting unit is now defendants (previously it was cases); disposal is now counted at the time of sentence/acquittal or other final disposal (previously it was at verdict/plea or other final disposal); and, where a trial collapses and retrial is ordered, the counting of the age of the case continues (previously the time taken for the collapsed trial was ignored and age was calculated from the date of the order for the re-trial).

³ The figures include committals for trial/sentence, ex officio indictments, re-trials ordered by the Court of Criminal Appeal or High Court, matters referred from the Mental Health Review Tribunal, transfers from the District Court, and re-activated matters (eg execution of a bench warrant).

⁴ Since 1 January 2005, disposal is counted at sentence, acquittal or other final disposal (previously it was counted at verdict, plea of guilty, or other final disposal). "Other final disposal" includes referral to the Mental Health Tribunal, no bill, death of the accused, order for a bench warrant to issue, transfer to another court, other final orders.

	2002	2003	2004	2005	2006
COMMON LAW DIVISION - CIVIL					
Administrative Law List					
Filings	108	112	118	116	183
Disposals	96	125	114	128	131
Pending cases at 31 December	57	49	60	63	121
Defamation List					
Filings	45	50	57	56	64
Disposals	64	65	73	60	74
Pending cases at 31 December	112	105	92	90	90
General Case Management List¹					
Filings					
Contested	438	213	288	283	333
Uncontested	115	94	211	216	133
Total	553	307	499	499	466
Disposals					
Contested	626	527	442	414	375
Uncontested	56	33	91	191	135
Total	682	560	533	605	510
Pending cases at 31 December					
Contested	1,190	896	794	744	784
Uncontested	49	61	127	116	77
Total	1,239	957	921	860	861

FILINGS, DISPOSALS AND PENDING CASES *CONTINUED*

	2002	2003	2004	2005	2006
Possession List					
Filings					
Contested	142	91	132	163	190
Uncontested	2,047	2,270	2,929	4,710	5,178
Total	2,189	2,361	3,061	4,873	5,368
Disposals					
Contested	117	97	103	124	162
Uncontested	2,229	1,981	2,823	3,544	4,986
Total	2,346	2,078	2,926	3,668	5,148
Pending cases at 31 December					
Contested	102	76	93	126	136
Uncontested	762	1,031	1,128	2,411	2,702
Total	864	1,107	1,221	2,537	2,838
Professional Negligence List					
Filings ²					
	111	101	117	114	142
Disposals					
	236	204	157	183	162
Pending cases at 31 December					
	487	423	389	354	353
Summons List					
Filings					
	622	527	629	560	565
Disposals					
	624	505	690	582	609
Pending cases at 31 December					
	418	425	379	360	331
Miscellaneous applications ³					
Filings					
	500	465	405	456	306
Disposals					
	424	405	318	306	153
Pending cases at 31 December					
	101	118	120	185	233
Related issues cases filed before February 1994 ⁴					
Disposals					
	17	4	0	282	1
Pending cases at 31 December					
	287	283	283	1	0
COMMON LAW DIVISION TOTALS - Civil					
Filings	4,128	3,923	4,886	6,674	7,094
Disposals	4,489	3,946	4,811	5,814	6,788
Pending cases at 31 December	3,565	3,467	3,465	4,450	4,827

¹ This list was formerly called the Differential Case Management List

² Additionally, in 2002 there were 47 cases transferred into this List.

³ These include applications under the Mutual Recognition Act, Trans-Tasman Mutual Recognition Act and applications for production orders.

⁴ These are cases against Dow Corning and 3M where damages were claimed for personal injury arising from silicon implants.

	2002	2003	2004	2005	2006
EQUITY DIVISION					
Admiralty List					
Filings					
	1	6	3	2	2
Disposals					
	4	3	4	2	3
Pending cases at 31 December					
	2	5	4	4	4
Adoptions List ¹					
Applications					
	170	151	207	204	154
Orders made					
	176	75	195	176	162
Pending cases at 31 December					
	38	38	23	38	30

FILINGS, DISPOSALS AND PENDING CASES *CONTINUED*

	2002	2003	2004	2005	2006
Commercial List					
Filings	216	181	193	192	215
Disposals	203	203	175	196	190
Pending cases at 31 December	234	218	233	240	265
Corporations List					
Filings	3,113	3,289	3,460	3,134	3,213
Disposals ²	2,872	2,777	2,903	2,807	2,775
Pending cases at 31 December	569	633	684	657	643
Protective List ³					
Applications	74	77	67	90	70 ⁴
Disposals	76	63	39	85	62 ⁵
Pending applications at 31 December	3	9	15	15	23
Technology and Construction List ⁶					
Filings	69	72	93	106	98
Disposals	76	56	110	94	93
Pending cases at 31 December	93	116	98	120	125
General List ⁷					
Filings	2,020	2,219	2,493	2,354	2,209
Disposals ⁸	2,290	2,607	2,839	2,943	3,622
Pending cases at 31 December	2,391	2,436	2,956	2,933	2,466
Probate (Contentious Matters) List					
Filings	132	202	168	172	166
Disposals	143	174	177	167	166
Pending cases at 31 December	72	100	91	96	96
EQUITY DIVISION TOTALS					
Filings ⁹	5,795	6,197	6,684	6,254	6,125
Disposals ¹⁰	5,840	6,159	6,442	6,470	7,071
Pending cases at 31 December	3,402	3,555	4,104	4,103	3,652
PROBATE APPLICATIONS – UNCONTESTED ¹¹					
Applications received	21,895	21,966	22,506	21,515	22,079

¹ In this List, all application types are counted, including information applications. Following an audit, the results for 2005 have been revised from those published in the 2005 Annual Review.

² These are Registrar's disposals only – disposals by Judges and Associate Judges are included in the total for the General List. Typically, the Registrar handles about 90 per cent of disposals.

³ The cases in this List can be of a "perpetual" nature. During the period when a person's affairs or property are managed under the Protected Estates Act, it is possible that more than one application will be made in relation to that person.

⁴ This figure is an estimate.

⁵ This figure is an estimate.

⁶ This List was formerly called the Construction List.

⁷ Revenue List matters are currently allocated to the General List. Revenue List matters cannot be isolated until a new computer system is implemented.

⁸ The disposals in this List also include cases disposed from the Corporations List by a Judge or Associate Judge.

⁹ The figures for 2005 have been revised following an audit of the Adoptions List.

¹⁰ The disposals counting for the Equity Division is not fully reliable because, for the two largest lists, a significant number of cases are re-opened (but not counted as fresh filings) and subsequently have a further disposal recorded against them.

¹¹ Registrars deal with the uncontested probate applications. Only a small number become contested and are then handled in the Probate (Contentious Matters) List.

TIMELINESS – AGE OF PENDING CASES

COURT OF APPEAL, COURT OF CRIMINAL APPEAL AND CRIMINAL LIST ^{1,2}

Number pending (and % of total)	National Standard³	2004	2005	2006
COURT OF APPEAL				
Total number of cases pending		539	490	381
Cases within 12 months of age	90%	483 (90%)	436 (89%)	335 (88%)
Cases within 24 months of age	100%	531 (99%)	480 (98%)	371(97%)
COURT OF CRIMINAL APPEAL				
Total number of cases pending		239	229	180
Cases within 12 months of age	90%	212 (89%)	214 (93%)	174 (97%)
Cases within 24 months of age	100%	231 (97%)	222 (97%)	177 (98%)
COMMON LAW DIVISION - CRIMINAL^{4,5}				
Total number of defendants pending		125	93	93
Cases within 12 months of age	90%	75 (60%)	68 (73%)	75 (81%)
Cases within 24 months of age	100%	114 (91%)	80 (86%)	89 (96%)

- ¹ Precise and timely reporting on the age of pending cases is not yet available for the civil cases of the Common Law Division and for the Equity Division. It is anticipated that the JusticeLink system, when fully delivered, will provide the necessary reports.
- ² For cases in the Court of Appeal and the Court of Criminal Appeal, the age of cases includes time taken to deal with any prerequisite application for leave to appeal.
- ³ The national standards are taken from the "backlog" performance indicator within the Court Administration chapter of the Report on Government Services (published by the Productivity Commission). Note that the national standards apply to higher courts in all states and territories. While almost all indictments in the Criminal List in this Court are for offences of murder and manslaughter, the range of indictments routinely presented in other states and territories is broader.
- ⁴ In all years, the figures exclude matters under Part 7 Crimes Appeal and Review Act 2001 (formerly s474D Crimes Act) and applications for re-determination of a life sentence.
- ⁵ The figures for 2004, 2005 and 2006 are comparable. The counting unit is defendants, disposal is counted at the time of sentence/acquittal or other final disposal, and where a trial collapses and re-trial is ordered, the counting of the age of the case is calculated from the date of committal (not from the date of the order for the re-trial).

**TIMELINESS – WAITING TIMES
OTHER LISTS**

Median finalisation time^{1,2} (unless otherwise indicated)	2002	2003	2004	2005	2006
COMMON LAW DIVISION - CRIMINAL					
Bails List – usual delay (weeks)	1-2	1-2	2-3	2-3	3-4
COMMON LAW DIVISION - CIVIL					
Administrative Law List (months)	4.6	5.6	4.8	4.4	4.8
Defamation List (months)	22.6	19.1	16.2	12.6	10.9
General Case Management List (months)	23.1	25.1	27.1	28.8	22.1
Possession List (months)	8.5	9.5	6.7	6.6	6.2
Professional Negligence List (months)	28.1	30.6	39.9	34.2	33.3
Summons List –civil matters (months)	2.4	3.8	2.6	3.5	2.8
Summons List – criminal matters (months)	8.2	7.0	15.2	6.6	10.0
Cases proceeding by default (months)	5.3	5.6	5.6	4.6	7.6
EQUITY DIVISION					
Admiralty List (months)	18.3	5.7	14.4	17.4	23.5
Adoptions List – usual finalisation time (weeks)	8-12	4-5	4-5	2-6	2-6
Commercial List (months)	10.4	14.0	10.4	10.1	12.0
Corporations List (months)	1.6	1.5	1.6	1.6	1.4
Probate (Contentious Matters) List (months)	5.0	1.7	2.8	4.0	3.8
Protective List – usual time for orders to be made (weeks)	3.5	3.5	3	2-4	2-4
Technology and Construction List (months)	14.0	21.9	5.4	7.3	7.7
General List (months)	11.3	10.1	10.3	9.6	11.1
Probate applications (uncontested) – usual time for grant to be made (working days)	2	2	2	2	2

¹ The median finalisation time refers to cases finalised during the reporting year. It is not necessarily an indicator of future waiting time, or of entrenched delay. When an unusually high number of older cases are finalised in a reporting year, the median finalisation time may be relatively high, in comparison to other years.

² The median finalisation times are not fully reliable due to limited reporting capability in the present computer system. Where cases have been disposed, then re-opened post-judgment, and then closed again, the finalisation time is calculated from the date of original commencement of proceedings to the latest disposal date, which is an over-representation of finalisation time in such cases.

USE OF ALTERNATIVE DISPUTE RESOLUTION

	2002	2003	2004	2005	2006
Court-annexed mediation referrals^{1,2}					
Common Law Division	8	19	7	6	12
Equity Division – not probate cases ³	133	180	284	229	262
Equity Division – probate cases	6	8	7	8	7
Court of Appeal ⁴	23	11	10	7	5
Percentage of cases settling at mediation	64%	65%	67%	62%	58%
Arbitration referrals					
Common Law Division	58	44	15	0	1

¹ "Court-annexed mediation" refers to the mediations that are conducted by Registrars of the Court who are qualified as mediators. It does not cover mediation provided by private mediators.

² During 2006 the Registry recorded 487 referrals to mediation. Of those, 316 were handled within the court-annexed mediation program, and the statistics here refer to those mediations only. The Registry does not collect data for mediations conducted by private mediators.

³ The number of referrals within this group for 2004 is extraordinarily high and may be an over-count.

⁴ Before 2002 the Court of Appeal did not refer matters to mediation.

APPENDIX (iii) THE COURT'S COMMITTEES AND USER GROUPS

Chief Justice's Policy and Planning Committee

The Committee meets each month to determine strategic policy to be adopted by the Court, particularly in relation to legislative, procedural or administrative changes that are likely to affect the Court and its users. The Policy and Planning Committee is one of only two Court Committees with decision-making responsibilities, the other being the Rule Committee. Caseload management remained an important focus throughout the year. The Committee also considered ways to improve Caselaw's value as a legal research tool.

The Committee continued to review policy and procedural initiatives submitted by the Court's other Committees detailed in this Appendix.

Members during 2006

The Honourable the Chief Justice (Chairperson)
The Honourable the President
The Honourable Justice Handley AO
The Honourable Justice Giles
The Honourable Justice McClellan
The Honourable Mr Justice Young AO
Secretary: Ms M Greenwood

Rule Committee

The Rule Committee meets each month to consider proposed changes to the Supreme Court Rules 1970 with a view to increasing the efficiency of the Court's operations, and reducing cost and delay in accordance with the requirements of access to justice. The Committee is a statutory body that has the power to alter, add to, or rescind any of the Rules contained in, or created under, the *Supreme Court Act 1970*. The Committee's membership is defined in section 123 of the Act, and includes representatives from each Division of the Court and key organisations within the legal profession.

Members during 2006

The Honourable the Chief Justice (Chairperson)
The Honourable the President
The Honourable Justice Hodgson
The Honourable Mr Justice James
The Honourable Mr Justice Hamilton
The Honourable Justice Bergin
The Honourable Justice Hoeben
Mr Geoff Lindsay SC (NSW Bar Association)
Mr H Macken (Law Society of NSW)
Secretary: Mr S Jupp
Advising Officer: Senior Deputy Registrar Flaskas

Education Committee

The Supreme Court Education Committee is responsible for the continuing education of the judges and associate judges of the Court. It meets three or four times each year, primarily to discuss arrangements for the Court's Annual Conference and to organise an occasional seminar series on topics relevant to the work of the Court.

Members during 2006

The Honourable Justice Ipp (Chairperson)
The Honourable Justice Santow OAM
The Honourable Justice McColl AO
The Honourable Justice Basten
The Honourable Justice Bell
The Honourable Justice Gzell
The Honourable Justice Nicholas (from March)
The Honourable Justice Hislop
The Honourable Justice White
The Honourable Justice Johnson
Ms M Greenwood
Secretary: Ms R Windeler
(Judicial Commission of NSW)

Building Committee

The Committee meets approximately every two months to discuss matters affecting the buildings within the Darlinghurst and King Street court complexes, and the Law Courts Building in Phillip Street. The Committee submits recommendations to the Chief Justice through the Policy and Planning Committee concerning maintenance and restoration work, including the desired outcome from the work. The Committee also identifies facilities that are required to support courtroom operations and the needs of Court users. The upcoming refurbishment of the Law Courts Building was the Committee's primary concern during 2006.

Members during 2006

The Honourable Justice McDougall (Chairperson)
The Honourable Justice Giles
The Honourable Justice McClellan
The Honourable Justice Hoeben
The Honourable Justice Brereton
The Honourable Justice Price (from November)
Ms M Greenwood
Mr G Byles (Sheriff of NSW)
Mr S Furness (Asset Management Service,
Attorney General's Department)
Mr S Lawes (Law Courts Limited)
Secretary: Mr J Grant

Information Technology Committee

The Information Technology Committee meets every two months to assess the information technology needs of judicial officers and their staff, and to review the implementation of IT services. During the year, the Committee discussed measures to increase the effectiveness of the remote access system, developed a draft copyright authorisation for Caselaw judgments and improvements to the transcript delivery process. IT training needs of judicial staff and the redevelopment of the Caselaw system remained as ongoing concerns for the Committee in 2006.

Members during 2006

The Honourable Justice Beazley (Chairperson)
The Honourable Justice McColl AO
The Honourable Justice Simpson
The Honourable Justice Einstein

The Honourable Justice Gzell
Associate Justice Macready
Ms M Greenwood
Mr J Mahon (Information Technology Services,
NSW Attorney General's Department)
Mr D Lane (Information Technology Services,
NSW Attorney General's Department)
Ms J Gee (Information Technology Services,
NSW Attorney General's Department)
Ms L O'Loughlin (Law Courts Library)
Ms E Walsham (Reporting Services Branch;
from August)
Secretary: Ms S Thambyrajah

Alternative Dispute Resolution Steering Committee

The Alternative Dispute Resolution (ADR) Steering Committee meets every two months to discuss the Court's ADR processes and consider ways in which they might be improved. The Committee works to encourage the use of ADR (particularly mediation) in solving disputes, and to ensure the Court has adequate infrastructure to provide this service. The Committee makes recommendations to the Chief Justice in pursuit of these objectives, consulting with other courts and external organisations where appropriate.

Members during 2006

The Honourable Justice Bergin (Chairperson)
The Honourable Justice Bryson
The Honourable Mr Justice Studdert
The Honourable Justice Campbell
The Honourable Justice Hoeben
The Honourable Justice Hall
The Honourable Justice Latham
The Honourable Associate Justice Harrison
Ms M Greenwood
Ms L Walton (from March)
Secretary: Ms J Highet

Jury Task Force

The Task Force was formed by the Chief Justice in 1992 to examine and report on matters relating to the welfare and wellbeing of jurors. The Task Force met regularly during 2006 to discuss issues affecting juries and jury service referred to it by the Chief Justice, a head of jurisdiction, or the

Attorney General. The Task Force monitors areas of policy concerning jurors with disabilities, the Sheriff's power to disclose the identity of a juror in the event of jury tampering, and exemptions from jury service.

Members during 2006

The Honourable Justice Buddin (Chairperson)
Mr M Lacey
His Honour Judge Shadbolt (District Court)
Mr G Byles (Sheriff of NSW)
Ms J Atkinson (Senior Policy Officer, Legislation and Policy Division, Attorney General's Department)
Mr K Marshall (Assistant Director, Major Works, Attorney General's Department)
Ms L Anamourlis (Manager, Jury Services)
Secretary: Mr R Escott

Court of Appeal Users' Group

The Group was established in 1999 and consists of representatives from the legal profession nominated by the Bar Association and the Law Society. The Group meets with the President twice a year and provides users with an opportunity to share ideas and raise concerns about the Court of Appeal's operations.

Members during 2006

The Honourable Justice Mason (Chairperson)
Mr J Maconachie QC
Mr D Davies SC
Mr J Gleeson SC
Mr N Mavrakis
Mr T Abbott
Mr B Moroney
Mr M Polden
Mr G Ulman
Ms K Fitzgerald

Court of Criminal Appeal/Crime User Group

The joint Court of Criminal Appeal/Crime User Group was established in 2004 to promote effective communication between the Court and key users. The Group focuses on ensuring that Court of Criminal Appeal procedures work effectively within the required time frames. The Group met twice in 2006.

Members during 2006

The Honourable Justice McClellan (Chairperson)
The Honourable Justice Barr
Ms M Greenwood
Mr J Riznyczok
Ms J Probert
Mr M Lacey
Mr C Smith (District Court of NSW)
Mr C Craigie (Public Defenders Office)
Mr B Sandland (Legal Aid Commission of NSW)
Ms D Kelly (Office of the Solicitor for Public Prosecutions NSW)
Mr M Day (Office of the Solicitor for Public Prosecutions NSW)
Ms G Drennan (Office of Commonwealth Director of Public Prosecutions)
Mr S Odgers SC (NSW Bar Association)
Mr D Giddy (Law Society of NSW)

Common Law Civil Users' Committee

The Committee provides a forum for discussing and addressing matters of concern or interest in the administration of the Common Law Division's civil trial workload. The Committee meets quarterly to discuss matters including: caseload management; listing practice and delays; specialist lists; jury issues, and regional hearings.

Members during 2006

The Honourable Justice McClellan (Chairperson)
The Honourable Justice Hislop (until March)
The Honourable Justice Hoeben
The Honourable Justice Hall (from March)
Ms M Greenwood
Mr J Riznyczok
Ms M Shevlin

Legal profession representatives

Mr P Deakin QC
Ms N Goodman (until March)
Mr P Johnstone (until March)
Ms S Fernandez
Mr R Ishak
Ms A Sullivan
Mr T Hewitt SC
Ms C Lazzarotto (from March)
Mr D Gray (from March)

Professional Negligence List Users' Group

The Group meets as required to discuss issues relevant to the administration and operation of the List. The Group met twice during 2006.

Members during 2006

The Honourable Mr Justice Studdert
(Chairperson)

The Honourable Justice Hislop

Mr David Davies SC

Mr Ian Butcher

Mr Don Munro

Mr Terence Stern

Ms Anna Walsh

Ms Janice Tully

Equity Liaison Group

This Group commenced during 2001 and met quarterly during 2006. The Group was established to promote discourse between the legal profession and representatives of the Equity Division upon matters of interest and importance to the operation of the Division. The Group is informal and the meetings facilitate candid discussions about the operations of the Division. Typically these discussions encourage cooperation between the judges and legal profession in developing suggested improvements to the Division's operations.

Members during 2006

The Honourable Mr Justice Young AO
(Presiding Member)

The Honourable Justice Bergin

Legal profession representatives

Mr R G Forster SC

Mr C (Robert) Newlinds SC

Mr R Harper SC

Ms J A Needham SC

Ms E Frizell (on leave)

Mr M Ashhurst

Mr M Condon

Ms A Kennedy

Mr J Martin

Mr B Miller

Mrs P Suttor

Corporations List Users' Group

The Group promotes open and regular discussion between judicial officers and legal practitioners regarding the Corporations List, and assists in ensuring that the List is conducted in a fair and efficient manner. The Group met three times during 2006 to consider and discuss various issues concerning the Court's work in corporations matters including Court procedures, listing arrangements, and application of the Corporations Rules.

Members during 2006

The Honourable Justice Austin (Chairperson)

The Honourable Justice Barrett (Secretary)

The judicial officers of the Equity Division

Ms M Greenwood

Ms L Walton

Legal profession representatives

Mr C (Robert) Newlinds SC

Mr M B Oakes SC

Mr G Cussen

Mr M Hayter

Mr J Johnson

Ms L Johnson

Mr D McCrostie

Ms M O'Brien

Mr J Thomson

Other members

Ms G Hayden (Australian Securities and Investments Commission)

Mr M Lotsof (Insolvency Practitioners Association of Australia)

Mr K Rennie (Ernst & Young)

Commercial List Users' Group

The Group provides a forum for discussion amongst the Commercial List Judges and legal practitioners who practise in the Commercial List and the Technology and Construction List (the Lists). The Group meets to discuss various issues concerning the administration of the Lists, including matters of procedure and practice in relation to the Lists and the potential for revision of the practice to ensure that the Lists operate as efficiently as possible.

Members during 2006

The Honourable Justice Clifford Einstein
The Honourable Justice Bergin (List Judge)
The Honourable Justice McDougall

Legal profession representatives

Barristers

Mr T Alexis SC
Mr M A Ashurst
Mr T F Bathurst QC
Ms E A Collins
Mr L V Gyles
Mr N C Hutley SC
Mr J C Kelly SC
Mr G C Lindsay SC
Mr R B Macfarlan QC
Mr G T Miller QC
Ms E M Olsson SC
Mr S D Robb QC
Mr M G Rudge SC
Mr R M Smith SC

Solicitors

Mr R J Drinnan
Mr R K Heinrich
Ms L E Johnson
Mr R G Johnston
Mr P J Keel
Mr H D Keller
Mr B P Kermond
Mr D J Kemp
Mr S H Klotz
Mr G A McClellan
Mr S A McDonald
Ms N K Nygh
Ms M A Pavey
Ms R S Persaud
Mr R W Schaffer
Mr G S Ulman
Mr M W Watson
Mr S D Westgarth

Probate Users' Group

The Group meets quarterly to discuss matters concerning the operation of the Court's Probate work. The Group considers improvements to practices and processes and makes recommendations to the Rule Committee when appropriate. The Group also discusses specific issues pertinent to probate matters and deceased estates generally.

Members during 2006

The Honourable Mr Justice Windeyer
AM RFD ED
Ms M Greenwood
Mr J Finlay
Professor R Croucher (Macquarie University,
representing NSW law schools)
Ms R Edenborough (Perpetual Trustee Company,
representing corporate trustees)
Mr R Neal (Law Society of NSW)
Mr P Whitehead (Public Trustee NSW)
Mr M Willmott (NSW Bar Association)
Secretary: Mr P Studdert

Media Consultation Group

The Media Consultation Group was established in 2002 to promote open discussion between key representatives from the courts, legal profession and media. The aim of the Group is to identify issues affecting the reporting of court proceedings by the media. Some of the issues considered by the Group included access to court records and the implications for the media when a suppression or non-publication order is issued. The Group meets on a needs basis. The Group met in 2006 to discuss the Attorney General's "Review of the policy on access to court information". The review proposes a number of legislative and administrative changes to the provision of information to the media and the community.

Members during 2006

The Honourable Justice McColl AO (Chairperson)
The Honourable Justice McClellan
The Honourable Justice Kirby
The Honourable Justice Nicholas
The Honourable Justice Blanch
(Chief Judge, District Court of NSW)
Ms S Zadel (Public Information Officer,
NSW superior courts)
Ms A Lowy (Public Information Officer, NSW
superior courts)
Mr N Cowdery QC (NSW Director of Public
Prosecutions)
Mr P Zahra SC (Senior Public Defender)
Mr R Coleman (Fairfax Legal)
Mr S Collins (ABC Legal)
Mr B Clifton (Chief Court Reporter, Daily
Telegraph)
Mr D Smith (Channel 7 Court Reporter)
Mr A Stewart (Channel 9 Legal)
Ms J Horton (Court Reporter, Radio 2GB)

Judges' JusticeLink Committee

The Committee meets weekly to monitor and discuss aspects of the JusticeLink project specifically from the Supreme Court's perspective. The Committee consists of nominated judicial representatives from the Court and key staff members from the Court's Registry, the Attorney General's Department and the JusticeLink project team.

Members during 2006

The Honourable Mr Justice Hamilton
The Honourable Justice Howie
The Honourable Justice Gzell (Chairperson)
The Honourable Associate Justice Macready
Ms M Greenwood
Mr S Jupp
Ms N Ubrihien
Mr P Ryan (Attorney General's Department)
Ms J Atkinson (Attorney General's Department)
Mr M McMullan (JusticeLink project)
Mr P Stark (JusticeLink project)

Heritage Committee

The Committee, which was established in 2002, is an advisory committee to the Chief Justice on matters concerning the Court's heritage. It comprises serving and retired judges and specialists in the fields of architecture, conservation and history. The Committee meets regularly to discuss ways of preserving and promoting aspects of the Court's heritage and history and makes recommendations to the Chief Justice as required.

Members during 2006

The Honourable Gordon Samuels,
AC, CVO, QC (Chairman)
The Honourable Justice Beazley
The Honourable Justice Bergin
The Honourable Justice Nicholas
The Honourable Associate Justice McLaughlin
The Honourable Simon Sheller, AO, QC
The Honourable (Acting) Justice Stein, AM
The Honourable (Acting) Justice Pearlman, AO
Mrs M Betteridge (museum consultant)
Ms D Jones (architectural consultant)
Mr B Johnson (architectural consultant)

Civil Registry Users' Group

The Civil Registry Users' Group meets approximately every four months to facilitate open discussion between the Court and key users regarding the delivery of civil registry services. The Group was established to assist the Court in identifying and meeting the needs and expectations of its users.

Members during 2006

Ms M Shevlin
Ms L Jennings
Mr R Rosman (Law and Order)
Ms L Allen (Minter Ellison)
Ms D Hallet (Blake Dawson Waldron)
Ms K Davidson (Deacons Lawyers)
Mr D Willoughby (Thomson)
Ms S Dart (Litsupport)

APPENDIX (iv): OTHER JUDICIAL ACTIVITY

As well as hearing and determining cases, Judges and Associate Judges actively contribute, both in Australia and overseas, in matters touching upon the law and legal education. Their contribution includes activities such as presenting papers and speeches at conferences and seminars, submitting articles for publication, giving occasional lectures at educational institutions, meeting judicial officers from courts around the world and hosting delegations. Many Judges and Associate Judges also serve as members of boards, commissions and committees for legal and cultural organisations within the community.

The Judges' and Associate Judges' activities during 2006 are summarised below:

THE HONOURABLE J J SPIGELMAN AC, CHIEF JUSTICE OF NEW SOUTH WALES

Conferences:

9 – 14 Jul	Judicial Delegation to Japan (Tokyo)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
20 – 23 Aug	Malaysian Judges Conference (Kuala Lumpur)
15 – 17 Sep	Australian Institute of Judicial Administration Conference (Adelaide)

Speaking Engagements:

30 Jan	Opening of Law Term Dinner (Sydney)
28 Feb	<i>Judicial Exchange between Australia and Japan</i> , International Conference on Japanese Law (Sydney)
2 May	<i>Transaction Costs and International Litigation</i> , 16th Inter-Pacific Bar Association Conference (Sydney)
6 May	International Association of Women Judges Conference (Sydney)
10 May	Address to Parole Authorities Conference (Sydney)
10 Jul	<i>The Jury System</i> , Supreme Court (Tokyo)
13 Jul	<i>Commercial Law</i> , Sophia University Law School (Tokyo)
14 Jul	<i>Common Law Systems</i> , Chuo University Law School (Tokyo)
7 Aug	On line launch, Law and Justice, State Library (Sydney)
22 Aug	<i>Case Management in New South Wales</i> , Annual Malaysian Judges Conference (Kuala Lumpur)
31 Aug	Opening Ceremony, Court of Criminal Appeal (Bathurst)
16 Sep	<i>Measuring Court Performance</i> , Australian Institute of Judicial Administration Conference (Adelaide)
20 Sep	<i>Shanghai And The West: First Contact</i> , the Warrane Lecture, University of New South Wales (Sydney)
28 Sep	Opening reception, Australian Women Lawyers Conference (Sydney)
4 Oct	Occasional Address, Australian Catholic University Spring Graduation Ceremony (Sydney)
9 Nov	Opening Address, Conference of Regulatory Officers (Sydney)
14 Nov	<i>Lions in Conflict: Ellesmere, Bacon and Coke – The Years of Elizabeth</i> , St Thomas More Society (Sydney)
15 Dec	Address on the Retirement of the Honourable Justice Handley AO (Sydney)

Publications:

Tort Law Reform: An Overview (2006) 14 *The Tort Law Review* 5
Tolerance, Inclusion and Cohesion (2006) 27 *Australian Bar Review* 133; March (2006) *Law Society Journal* 51
The Internet and the Right to a Fair Trial (2006) 7 *The Judicial Review* 403
Address to Parole Authorities Conference (2006) 8 *The Judicial Review* 11
Transaction Costs and International Litigation (2006) 80 *Australian Law Journal* 438
Measuring Court Performance (2006) 16 *Journal of Judicial Administration* 69
Judicial Exchange between Australia and Japan (2006) 11 *Journal of Japanese Law* 225
Foreword, G Winterton (Ed) *State Constitutional Landmarks* (2006) Federation Press

APPENDIX (iv): OTHER JUDICIAL ACTIVITY

Delegations and International Assistance:

23 Feb	Chinese Delegation led by Mr. Jia Jianmin, Chairman of Henan Provincial Judge Training Institute.
16 Mar	Chinese Delegation led by Vice-Mayor of Tianjin, Mr Sun Hai-Lin.
23 Mar	Chief Justice of Delaware, Myron T Steele.
7 Apr	Chinese Delegation, led by Professor Niu Jianhua Vice President of the National Judges College of P.R. China
6 May	Chief Justice of the Solomon Islands, Sir Albert Palmer.
12 May	Chief Justice of Fiji, Daniel Fatiaki.
17 May	Her Excellency Kirsty Sword Gusmao, First Lady of the Democratic Republic of Timor-Leste.
18 Aug	Chinese Delegation led by Mr Lin Mengchun Vice Chairman of the Judges Association of Guangdong Province.
18 Oct	Vietnamese Delegation led by Justice Tuong Duy Luong, Chief Judge of the Civil Court, Supreme People's Court of Vietnam.
23 Nov	Delegation from Guizhou Province Supreme Court, China, led by Vice President Mr Song Zhanping
7 Dec	His Excellency Sum Manit, Advisor to the Kingdom of Cambodia

THE HONOURABLE JUSTICE KEITH MASON, PRESIDENT OF THE COURT OF APPEAL

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
14-16 Sep	Appellate Judges' Conference, AJA (Adelaide)
29 Sep – 10 Dec	Inns of Court Fellowship (London, England)

Speaking Engagements:

18 Apr	District Court Judges' Conference: "Recurring Issues in the Court of Appeal" (Sydney)
7 Aug	Address – National Forum on Australia's Christian Heritage: "Law and Religion in Australia" (Canberra)
21 Aug	Supreme Court & Law Society Conference: Chair First Session (Sydney)
12 Sep	Opening address – Government Lawyers Conference: "Government Lawyers" (Sydney)
13 Sep	Opening address – National Security Law Course (University of Sydney)
20 Sep	Speech – Crown Solicitor's Seminar: "Administrative Law: The New South Wales Landscape" (Sydney)
2 Nov	Address – Statute Law Society, Institute of Advanced Legal Studies, "Legislators' Intent: How judges discern it and what they do if they find it" (London, England)
27 Nov	Address – Chancery Bar Association, Inner Temple: "What has Equity to do with Restitution?" (London, England)

Publications:

"Believers in Court: Sydney Anglicans going to Law", The Cable Lecture, 2005, published by the Churchwardens of St James' Church: Sydney 2006
Co-editor of Mason & Handler, Wills Probate and Administration Service (NSW)

Membership of Legal, Cultural or Benevolent Organisations:

Chancellor, Anglican Diocese of Armidale
Member, Appellate Tribunal of the Anglican Church of Australia

Commissions in Overseas Courts:

1 Jan – 31 Dec	Held a commission as a judge of the Supreme Court of Fiji
25 Apr – 1 May	Sat as a judge in the Supreme Court of Fiji

THE HONOURABLE JUSTICE K R HANDLEY AO

Conferences:

21-25 Jan	Supreme and Federal Courts Judges' Conference (Brisbane)
21-25 May	International Academy of Estate and Trust Law (Dublin, Ireland)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

24 Mar	Lecture – Commercial Law Association “Estoppel” (Sydney)
18 Aug	Paper – “ <i>The Three High Court decisions on estoppel 1988-1990</i> ” (Leura)
4 Oct	Launch – Lincolns Inn “ <i>Estoppel by Conduct and Election</i> ” (London, UK)
1 Nov	Launch – NSW Bar Association “ <i>Estoppel by Conduct and Election</i> ” (Sydney)

Publications:

“Exploring Election”, *Law Quarterly Review* (2006) 122 LQR 83 January
“Estoppel”, *Commercial Law Quarterly* Sydney June
“The Three High Court decisions on estoppel 1988-1990” (2006) 80 ALJ 724
Estoppel by Conduct and Election, Sweet & Maxwell London 2006

Membership of Legal, Cultural or Benevolent Organisations:

President Council Cranbrook School
President NSW State Council of St John Ambulance Australia (NSW)

Commissions in Overseas Courts:

1 Jan – 31 Dec	Held a commission as a judge of the Supreme Court of Fiji
10-19 Oct	Sat as a judge in the Supreme Court of Fiji

THE HONOURABLE JUSTICE MARGARET JOAN BEAZLEY AO

Conferences:

21-25 Jan	Supreme and Federal Courts Judges' Conference (Brisbane)
11-13 Apr	Joint Seminar on Legality of Administrative Behaviours and Types of Adjudication (Xian, People's Republic of China)
3-7 May	International Association of Women Judges 8th Biennial Conference (Sydney)
18-20 Aug	Supreme Court of New South Wales Annual Conference (Leura)
29-30 Sep	Inaugural Australian Women Lawyers Conference (Sydney)
6-8 Oct	Judicial Conference of Australia Colloquium (Canberra)

Publications:

21 Jan	Paper – “ <i>An Obvious Step Too Far? Reconciling the Concepts of Duty of Care and Breach</i> ” – Supreme and Federal Courts Judges' Conference (Brisbane)
30 Mar	Speech – Women Barristers' Forum (Phillips Fox, Sydney)
11-13 Apr	Lecture series – “ <i>The Scope of Judicial Review</i> ” – Joint Seminar on Legality of Administrative Behaviours and Types of Adjudication (Xian, People's Republic of China)
14 Apr	Lecture – “ <i>Multiple Facets of Law Reform</i> ” – Judicial Training College (Shanghai, People's Republic of China)
24 May	Lecture – Sydney Law School Advocacy Class (Sydney)
6 Jun	Speech – Sydney University Law School Women's Mentoring Programme (Sydney)
18 Aug	Commentary on paper by Barbara McDonald, Associate Professor, Faculty of Law, University of Sydney, “ <i>Negligence: the impact of the Civil Liability legislation on the fundamental policies and principles of the common law</i> ” - Supreme Court of New South Wales Annual Conference (Leura)
7 Sep	Speech (on the long history of Women's Associations and Women's professional Associations in Australia) given to the International Women's Insolvency and Restructuring Confederation NSW Anniversary Dinner (Sydney)
30 Sep	Paper – “ <i>Recent Developments in Tort Law Litigation: The Civil Liability Act 2002</i> ” – presented at the Inaugural Australian Women Lawyers Conference (Sydney)
6 Oct	Commentary on paper delivered by the Hon Justice Cummins, “ <i>Judicial Ethics in the Twenty-first Century</i> ” – Judicial Conference of Australia Colloquium (Canberra)
16 Nov	Speech – “ <i>Ethics and the legal profession</i> ” given at the College of Law Graduation Ceremony (Sydney)
11 Dec	Speech – University of Western Sydney Law Alumni Annual Dinner (Parramatta)

Membership of Legal, Cultural or Benevolent Organisations:

Chair, NSW Chapter, Australian Institute Administrative Law

Executive Committee Member, Judicial Conference of Australia

Chair, Advisory Committee, *"Equality Before the Law Bench Book"*, Judicial Commission of New South Wales

Member, Planning Committee, International Association of Women Judges

Member, Women's Advisory Network of the National Breast Cancer Council

Member of the Board of Governors, Queenwood School for Girls

Advisory Board Member, Centre for Children and Young People, Southern Cross University

Member, Sydney Youth Orchestra Association Committee

THE HONOURABLE JUSTICE R D GILES

Speaking Engagements:

11,14 & 18 Sep Addresses, *Judicial Fact-Finding*, seminars for judges of the Supreme People's Court, People's Republic of China given under the auspices of the National Judicial College (Beijing, Shanghai and Xian, China)

Membership of Legal, Cultural or Benevolent Organisations:

Member, Editorial Board of the Insurance Law Journal

THE HONOURABLE JUSTICE D H HODGSON

Conferences:

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Membership of Legal, Cultural or Benevolent Organisations:

Part-time Commissioner, NSW Law Reform Commission

Supreme Court Representative on the Faculty of Law at the University of NSW

THE HONOURABLE JUSTICE DAVID ANDREW IPP

Conferences:

1 – 3 Jun Colloquium & Workshop for Judges & Lawyers on the Justiciability of Economic, Social & Cultural Rights in the Pacific (Suva, Fiji)

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

22 Mar Opening Commentary – Litigation Masterclass, University of NSW, Continuing Education Programme (Sydney)

2 Sep Keynote Speaker – New Zealand Bar Association Winter Conference "Finding Facts – Are the principles understood or do we leave too much to judicial instinct? (Queenstown, NZ)

Publications:

"Problems with Fact-Finding", (2006) 80 (10) *Australian Law Journal* 667

Membership of Legal, Cultural or Benevolent Organisations:

Chair of the Standing Advisory Committee on Judicial Education (Judicial Commission of NSW)

Member, Court of Arbitration for Sport – Appeals Division, Oceania Registry

Commissions in Overseas Courts:

1 Jan – 31 Dec Held a commission as a judge of the Supreme Court of Fiji

10-19 Oct Sat as a judge in the Supreme Court of Fiji

THE HONOURABLE JUSTICE MURRAY HERBERT TOBIAS AM RFD

Conferences:

14-15 Sep AIJA Appellate Judges' Conference (Adelaide)

THE HONOURABLE JUSTICE RUTH MCCOLL AO

Conferences:

3-7 May	International Association of Women Judges Conference (Sydney)
29-30 Jun	Access to Justice Conference (Prato, Italy)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
29-30 Sep	Australian Women Lawyers Conference (Sydney)
6-8 Oct	JCA Annual Colloquium (Canberra)

Speaking Engagements:

3 May	Address – Anglo-Australasian Society of Lawyers “ <i>Women in the Law</i> ” (Sydney)
27 Jun	Address – Access to Justice Conference – “ <i>The Obsessed Litigant: The Australian Perspective</i> ” – (Prato, Italy)
10 Sep	Address – The Jewish Museum – “ <i>The Dreyfus Affair – One Hundred years on – Does it Matter Anymore?</i> ” (Sydney)
29 Sep	Address – The Australian Women Lawyers Conference – “ <i>Current Developments in Ethical Issues in Litigation: The Wasted Costs Jurisdiction</i> ” (Sydney)

Publications:

Foreword to “Defamation Law in Australia”, by Patrick George (LexisNexis Butterworths 2006)

Membership of Legal, Cultural or Benevolent Organisations:

Treasurer (2003-2006), and Deputy Chair (since October 2006) Judicial Conference of Australia
Member, New South Wales Rhodes Scholarship Selection Committee
Member, Law Council of Australia’s Human Rights Observer Panel

THE HONOURABLE JUSTICE JOHN BASTEN

Conferences:

24 Feb	2006 Constitutional Law Conference (Sydney)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
15-17 Sep	Appellate Judges Conference and 24th AJA Annual Conference (Adelaide)
6-8 Oct	Judicial Conference of Australia – Colloquium 2006 (Canberra)

Speaking Engagements:

24-26 May	Native Title Conference 2006: Tradition & Change – Paper “ <i>The Curious History of the Mabo Litigation</i> ” (Darwin)
17 Aug	Chair: <i>Constitutional Implications of Terrorism Legislation</i> at Supreme Court Conference (Leura)
3-4 Nov	Dinner speech at Annual Public Law Weekend (Canberra)

THE HONOURABLE JUSTICE MCCLELLAN, CHIEF JUDGE AT COMMON LAW

Conferences:

16 -17 Mar	Asia Pacific Judicial Reform Forum (Sydney)
2-7 Jul	International Criminal Law Conference (Brisbane)
9-16 Jul	Australian Judicial Delegation to Supreme Court of Japan (Tokyo)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
31 Oct – 4 Nov	International Symposium on Judicial Review – Supreme People’s Court of People’s Republic of China, Hangzhou (China)

Speaking Engagements:

28 Feb	Lecture on Terrorism and the Law (Sydney)
12 May	2006 Economics & Business Educators Legal Studies Students Professional Development Conference, Parliament House: <i>"Law, Justice and Society"</i>
19 May	University of Sydney Graduation Ceremony: Occasional Address
2 Aug	Local Courts of NSW Annual Conference Keynote Address: <i>"Who is telling the truth? Psychology, common sense and the law"</i>
17 Aug	Australian Institute of Urban Studies Seminar – Sydney's Water Supply – a Reality Check: <i>"Is there a need for a public inquiry?"</i>
10 Oct	National Judicial College of Australia – National Judicial Orientation Program – expert evidence in civil proceedings
20 Oct	Industrial Relations Commission of NSW Annual Conference: <i>"Expert Evidence – Aces up your sleeve?"</i>
4 Nov	International Symposium Hangzhou, People's Republic of China: <i>"Australian Administrative Law"</i>
6 Dec	Australian Construction Law Discussion Group: <i>"Concurrent evidence"</i>

Publications:

"The Executive and the Judiciary", *The Australian Law Journal* 80 ALJ 97
 "Who is telling the truth? Psychology, common sense and the law", *The Australian Law Journal* 80 ALJ 655
 "Terrorism: What judges will be asked to do under the new legislation", *Judicial Officer's Bulletin* April 2006 Vol 80 No 3
 Courts in the 21st century – should we do things differently?" *The Judicial Review* September 2006 Vol 8 No 1

Membership of Legal, Cultural- or Benevolent Organisations:

Member of the Executive of the Australian Pacific Judicial Reform Forum

Delegations and International Assistance:

22-23 Mar	Judicial delegation from Philippines
6 Apr	China-Aust Human Rights Program
26 Oct	Vietnam Supreme People's Court: Human Rights & Equal Opportunity Commission: "Protecting the rights of parties and witnesses in criminal proceedings"
30 Oct	Judicial delegation from Supreme Court of Korea

THE HONOURABLE JUSTICE TIMOTHY JAMES STUDDERT**Conferences:**

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Speaking Engagements:

29 Jul	Address – Medical Law Conference, Australian Lawyers Alliance: <i>"The Scope and Utility of the Rules of Court"</i> (Sydney)
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THE HONOURABLE MR JUSTICE WILLIAM VICTOR WINDEYER AM RFD ED**Conferences:**

21-25 Jan	Supreme Courts and Federal Court Judges Conference (Brisbane)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

19-20 Oct	Key Note Address – Succession Law Conference (Adelaide) <i>On Either Side of Death's Dark Door</i>
25 Mar	Address to Young Lawyers Property Seminar "Perspectives from the Bench – When good property transactions go bad"
14 Mar	Opening Remarks for Conference on Practice and Procedure in Will Drafting and Probate Applications conducted by the Centre for Continuing Legal Education at the University of New South Wales

Membership of Legal, Cultural or Benevolent Organisations:

Presiding Member Legal Profession Admission Board
 Chancellor of the Anglican Diocese of Grafton

THE HONOURABLE JUSTICE CAROLYN SIMPSON

Conferences:

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Membership of Legal, Cultural or Benevolent Organisations:

Chair of LPAB Examinations Committee

THE HONOURABLE MR JUSTICE HAMILTON

Conferences:

10 – 15 Sep Commonwealth Magistrates' & Judges' Association 2006 14th Triennial Conference (Toronto, Canada)

Speaking Engagements:

11 Mar Paper – “Developments in Civil Procedure”, NSW Young Lawyers Annual One Day Litigation Seminar

12 Sep Paper – “Conflict & Cooperation: Implementing International Environmental Treaties in a Federal Australia”, 2006 CMJA 14th Triennial Conference (Toronto, Canada)

15 Sep Presentation on Developments in NSW to Panel Session on the Use of Expert Evidence in Court, 2006 CMJA 14th Triennial Conference (Toronto, Canada)

Membership of Legal, Cultural or Benevolent Organisations:

Member, Australian Chief Justices' Rules Harmonisation Committee

THE HONOURABLE JUSTICE C EINSTEIN

Conferences:

21-25 Jan Supreme and Federal Court Judges' Conference – (Brisbane, QLD)

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

12 Sep Commercial Judges Forum, College of Law, Sydney (keynote address)

21 Sep e.litigation – Legal Wise Seminar, Sydney (chair)

Publications:

“Recent Developments in Opinion Evidence – Exposing the Factual Basis for an Expert’s Opinion”, The Judicial Review, 2006, Volume No. 7, Number 4, March 2006.

THE HONOURABLE JUSTICE MICHAEL FREDERICK ADAMS

Conferences:

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

27 May Adjudicator – NSW Bar Practice Course

Membership of Legal, Cultural or Benevolent Organisations:

Commissioner – NSW Law Reform Commission (until 30 June 2006)

Commissions in Overseas Courts:

1 Jan – 31 Dec Held a commission as a judge of the Court of Appeal of the Solomon Islands

THE HONOURABLE JUSTICE DAVID KIRBY

Conferences:

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

THE HONOURABLE JUSTICE R P AUSTIN

Conferences:

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

29 May "Compulsory Acquisition of Minority Shareholdings", occasional Master of Laws Class, Faculty of Law, University of New South Wales

11 Aug "Hip-pocket injuries in workouts: Accessory liability for bankers and advisers", Banking & Financial Services Law Association 23rd Annual Conference, Surfers Paradise, (Presenter)

18 Aug "Developments in Company Law in the UK; A Commentary from an Australian Perspective", Supreme Court of New South Wales Annual Conference, (Presenter)

21 Aug Company Directors and Corporate Social Responsibility: UK and Australian Perspectives, Supreme Court of New South Wales and the Law Society of New South Wales Conference, (Chairman)

12 Oct "The Legal Standard of Loyalty and Professional Guidelines", Insolvency Practitioners Association of Australia National Conference, Brisbane, (Presenter)

Publications:

Co-author, *Ford's Principles of Corporations Law* (LexisNexis, looseleaf)

Membership of Legal, Cultural or Benevolent Organisations:

Challis Lecturer in Corporate Law, University of Sydney (Master of Laws degree courses in *Takeovers and Reconstructions* and *Corporate Fundraising*)

Member, The Takeovers Panel, Australian Government (until resignation in September)

Member, Editorial Board, *Company and Securities Law Journal*

THE HONOURABLE JUSTICE ANTHONY WHEALY

Conferences:

21 - 26 Jan Supreme and Federal Courts Judges' Conference (Brisbane, Queensland)

2 - 6 Jul International Society for the Reform of Criminal Law 20th Conference (Brisbane, Queensland)

18- 20 Aug Supreme Court Judges Conference (Leura, New South Wales)

Speaking Engagements:

2 - 6 Jul Chairperson and Commentator of Paper - Fact Finding On Sentence at I.S.R.C.L Conference (Brisbane)

11 Jul Paper - Instructing Jury Trials in Complex Commercial Matters - Twilight Seminar , Consultation Room, Level 13 Queens Square

THE HONOURABLE JUSTICE HOWIE

Conferences:

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

2 Aug Local Court Annual Conference – *Recent Criminal Law*

19 Aug Supreme Court Annual Conference – *Review of Recent Criminal Law*

21 Aug National Judicial College of Australia – Travelling Judicial Professional Development Programme – *The Commonwealth Criminal Code*

11 Oct NSW Young Lawyers CLE Seminar Series - *Sentencing Trends and issues*

Publications:

Consulting Editor for *Criminal Law News* (published by Lexis Nexis)

Co-author of *Criminal Practice and Procedure* (Lexis Nexis looseleaf)

"Sentencing Update" – *Judicial Officers' Bulletin* - September 2008 Vol 18 No. 18

Membership of Legal, Cultural or Benevolent Organisations:

Chairman of Bench Book Committee

THE HONOURABLE JUSTICE REGINALD BARRETT

Conferences:

21-25 Jan	Supreme and Federal Courts Judges' Conference (Brisbane)
23-25 Feb	Law Council of Australia and Leo Cussen Institute Conference "Superannuation 2006" (Melbourne)
24-26 Mar	Federal Court of Australia/Law Council of Australia Joint Seminar on Corporations Law (Sydney)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
21 Aug	Supreme Court and Law Society of New South Wales Conference "Directors' Duties and Corporate Social Responsibility"

Speaking Engagements:

24 Feb	Law Council of Australia and Leo Cussen Institute Conference "Superannuation 2006" (Melbourne) "The Principle in Re Hastings-Bass"
9 Mar	Launch of Allens Arthur Robinson "2005 Annual Review of Corporate Insolvency and Restructuring Law"
21 Aug	Panel member for "Strictly Hypothetical" at Supreme Court and Law Society of New South Wales Conference

THE HONOURABLE JUSTICE PALMER

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Speaking Engagements:

27 Sep	Annual MLANZ Conference, Sydney, Opening Address
13 Oct	T.C. Beirne School of Law (Qld), Law Graduates Association Annual Dinner
11 Nov	Australian Professional Legal Education Council Annual Conference, Opening Address

Membership of Legal, Cultural or Benevolent Organisations:

President, Arts Law Centre of Australia
Chairman, Pacific Opera Company
Director, Ars Musica Australis
Director, Sydney Omega Ensemble

THE HONOURABLE JUSTICE CAMPBELL

Conferences:

22-25 May	International Academy of Estate and Trust Law Conference (Dublin, Ireland)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

8 Mar	"Some Aspects of Privilege Concerning Communication with Lawyers" – paper for College of Law-sponsored "The Judges Series"
23 Aug	"Some Aspects of the Practical Operation of Litigation Relating to Deceased Estates" – paper for NSW Young Lawyers
2 Dec	Training course for solicitors proposing to act as independent solicitors on the execution of Anton Piller orders, College of Law

Publications:

"Some Aspects of Privilege Concerning Communication with Lawyers" (2006) 27 (3) Aust Bar Rev 264

Membership of Legal, Cultural or Benevolent Organisations:

Member, Law Admissions Consultative Committee
Academician, International Academy of Estate and Trust Law
Member, ad hoc subcommittee of Rules Harmonisation Committee to draft practice notes on Mareva Orders and Anton Piller orders

THE HONOURABLE JUSTICE TERRY BUDDIN

Conferences:

18-19 May	National Judicial College of Australia (Melbourne)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
10 -12 Oct	National Judicial College of Australia (Sydney)

Speaking Engagements:

18-19 May	Presenter, Session on Sentencing, National Judicial College of Australia (Melbourne)
10-12 Oct	Presenter, Session on Sentencing, National Judicial College of Australia (Sydney)

Membership of Legal, Cultural or Benevolent Organisations:

Member, National Judicial Orientation Programme Steering Committee

THE HONOURABLE JUSTICE GZELL

Conferences:

21-25 Jan	Supreme and Federal Courts Judges' Conference (Brisbane, Qld)
4-6 May	Taxation Institute of Australia South Australia Division Conference (Barossa Valley, SA)
21-25 May	The International Academy of Estate and Trust Law Conference (Dublin, Ireland)
27-28 Jul	Taxation Institute of Australia Annual States Taxation Conference (Hobart, Tas)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
12-13 Oct	Society of Trust and Estate Practitioners' Asia Conference (Hong Kong)

Speaking Engagements:

4 May	Keynote address – Taxation Institute of Australia "The Legacy of Justice Graham Hill" (Barossa Valley, SA)
27 Jul	Paper – Taxation Institute of Australia "Dealing with State Taxes" (Hobart, Tas)
12 Oct	Paper – STEP Asia "The Taxpayer's Duty of Disclosure" (Hong Kong)
19 Dec	Dinner Speech – Institute of Chartered Accountants Taxation Discussion Group No 14 "The Late Justice Graham Hill" (Sydney, NSW)

Membership of Legal, Cultural or Benevolent Organisations:

Vice-President Western Pacific, The international Academy of Estate and Trust Law
Judiciary Member, Society of Trust and Estate Practitioners
Patron and Life Member, Regional Arts New South Wales
Honorary Member, Taxation Committee of Business Law Section of Law Council of Australia

Delegations and International Assistance:

18 May	Met with Judge David Wong, High Court, Malaysia
1 Dec	Met with Assistant Judge Takashi Masuo, Kurume Branch of Fukuoka District Court, Japan

THE HONOURABLE JUSTICE NICHOLAS

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Speaking Engagements:

23 Mar	University of NSW CLE Seminar; Defamation Law Update
11 Sep	Paper "The conduct of civil trials before the Supreme Court of New South Wales": National Judges' College (Beijing)
14 Sep	Paper "The conduct of civil trials before the Supreme Court of New South Wales": High Court (Shanghai)

Membership of Legal, Cultural or Benevolent Organisations:

Chairman, St Paul's College Council until April, 2006
Director, NSW Cultural Management Ltd (Sydney Theatre)
Chairman, Kimberly Foundation Australia
Honorary Councillor, Royal Agricultural Society of NSW
Trustee, McGarvie Smith Institute
Member, Court of Arbitration for Sport, Oceania Registry

Delegations and International Assistance:

June	Met delegation of representatives Lao Peoples Supreme Court, Lao Bar Association and related organisations
Dec	Met with His Excellency Sum Manit adviser to the Kingdom of Cambodia

THE HONOURABLE JUSTICE ROBERT MCDUGALL

Conferences:

21-27 Jan	Supreme and Federal Courts Judges' Conference (Brisbane)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

21 Feb	LexisNexis Seminar and presented paper "Implied Duty of Good Faith"
26-28 May	Institute of Arbitrators and Mediators Conference, paper on "Prohibition on Contracting Out" (Cairns)
10 Jul	Building Disputes Practitioners Society Meeting, presented paper on "Proportionate Liability"(Melbourne)
12 Sep	College of Law Seminar on Commercial and Construction List Practice with Einstein and Bergin JJ

Publications:

"Prohibition on contracting out of the Building and Construction Industry Security of Payment Act 1999 (NSW)", *Building and Construction Law Journal* (2006) Vol. 22 No. 4
"Proportionate liability in construction litigation", *Building and Construction Law Journal* (2006) Vol. 22 No. 6

THE HONOURABLE JUSTICE WHITE

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Speaking engagements:

15 Feb	Judges' Series 2006 (College of Law) "Pleadings"
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THE HONOURABLE JUSTICE C R R HOEBEN AM RFD

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Membership of Legal, Cultural or Benevolent Organisations:

Honorary Colonel of University of NSW Regiment
Chairman of Royal Humane Society of NSW

THE HONOURABLE JUSTICE JOHNSON

Conferences:

21-25 Jan	Supreme and Federal Court Judges' Conference (Brisbane)
2-6 Jul	International Society for the Reform of Criminal Law Conference (Brisbane)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)

Publications:

"Majority Verdicts in New South Wales" (2006) 18 Judicial Officers Bulletin 33 (with Mr Hugh Donnelly)

Delegations and International Assistance:

30 Oct	Meeting (together with McClellan CJ at CL) to discuss sentencing issues with Justice Jinku Hwang of the Supreme Court of Korea and Judge Tae Suplee of the Seoul Southern District Court
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THE HONOURABLE JUSTICE MEGAN LATHAM

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Speaking Engagements:

8 Mar	Welcome Address – University of New South Wales – Faculty of Law – Law Prize Ceremony
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THE HONOURABLE JUSTICE STEPHEN ROTHMAN AM

Conferences:

21 – 26 Jan	Supreme and Federal Courts Judges' Conference (Brisbane)
11 – 12 Feb	National Judicial College of Australia – Sentencing Principles (Sydney)
19 May	Administrative Review Council – The Scope of Judicial Review (Sydney)
2 – 7 Jul	International Society for the Reform of Criminal Law – <i>Justice for All-Victims, Defendants, Prisoners and the Community</i> (Brisbane)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
15-17 Sep	The Australian Institute of Judicial Administration – <i>Affordable Justice</i> (Adelaide)
6 – 8 Oct	The Judicial Conference of Australia's Colloquium 2006 (Canberra)

Speaking Engagements:

10 Aug	Workplace Research Centre of the University of Sydney – Annual Labour Law Conference: Workchoices: What's happened so far – “ <i>The evolution of Labour Law and significance of Workchoices.</i> ” (Sydney)
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Membership of Legal, Cultural or Benevolent Organisations:

Member, Equality before the Law Handbook Committee – Judicial Commission of New South Wales
Director; Chair Workplace Relations Committee – Association of Independent Schools
Non-Trustee Governor; Executive Member, Member Planning Committee and Status Committee – Jewish Communal Appeal
Immediate Past President; Executive Member – NSW Jewish Board of Deputies
Executive Member – Board of Jewish Education
Co-Chair – Australian Coordinating Committee of Jewish Day Schools

THE HONOURABLE JUSTICE PAUL BRERETON RFD

Conferences:

21-25 Jan	Supreme & Federal Courts Judges' Conference (Brisbane)
15-19 May	National Judicial College – Orientation Program (Melbourne)
18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)

Speaking Engagements:

1 Mar	College of Law Judges Series – paper - <i>Subpoenas, Discovery & Interrogatories</i> (w Justice Lindgren – Federal Court of Australia) (Sydney)
10 May	Macarthur Law Society, meeting - address – <i>Aspects of Equity Practice</i> (Leumeah)
12-13 Aug	College of Law Advanced Family Law Weekend – “ <i>Aspects of Advocacy</i> ” (Sydney)
15-17 Sep	AIJA Conference – Commentator – “ <i>Alternatives to Adversarial Proceedings</i> ” (Adelaide)
25 Oct	Nat'l Family Law Conference – “ <i>Where Death & Divorce Meet - Intersection of Family Provisions Legislation & Family Law</i> ” (Perth)

Membership of Legal, Cultural or Benevolent Organisations:

Member, Law Extension Committee, University of Sydney

THE HONOURABLE ASSOCIATE JUSTICE MACREADY

Conferences:

18 – 20 Aug	Supreme Court of NSW Annual Conference (Leura)
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Speaking Engagements:

16 Sep	NSW Young Lawyer Seminar – “ Appearing before the Associate Justices”
19 Aug	Supreme Court Annual Conference – “Commentary on paper concerning property claims by de facto spouses”

Supreme Court of New South Wales

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